

**Senate Bill No. 443**

(By Senator Kessler (Mr. President), Browning, Unger, Jenkins,  
Klempa, Wills and Yost)

[Introduced January 27, 2012; referred to the Committee on  
Pensions; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
1931, as amended, relating to the reduction of state income  
taxes for certain state and federal retirees by increasing the  
exemption on retirement income in calculating the federal  
gross income for state personal income tax purposes.

*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

1 resident individual means his or her federal adjusted gross income  
2 as defined in the laws of the United States for the taxable year  
3 with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* --

5 ~~There shall be~~ The following items are added to federal adjusted  
6 gross income unless already included: ~~therein the following items:~~

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

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

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

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

23 (5) Interest on a depository institution tax-exempt savings  
24 certificate ~~which is~~ allowed as an exclusion from federal gross

1 income under Section 128 of the Internal Revenue Code for the  
2 federal taxable year;

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

7 (7) Amounts withdrawn from a medical savings account  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

13 (c) *Modifications reducing federal adjusted gross income.* --  
14 ~~There shall be~~ The following items are subtracted from federal  
15 adjusted gross income: ~~to the extent included therein~~

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

19 (2) Interest or dividend income on obligations or securities  
20 of any authority, commission or instrumentality of the United  
21 States or of the State of West Virginia to the extent includable in  
22 gross income for federal income tax purposes but exempt from state  
23 income taxes under the laws of the United States or of the State of  
24 West Virginia, including federal interest or dividends paid to

1 shareholders of a regulated investment company under Section 852 of  
2 the Internal Revenue Code for taxable years ending after June 30,  
3 1987;

4 (3) ~~Any~~ Amounts included in federal adjusted gross income for  
5 federal income tax purposes for the taxable year that ~~is~~ are not  
6 included in federal adjusted gross income under this article for  
7 the taxable year;

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

12 (5) Annuities, retirement allowances, returns of contributions  
13 and any other benefit received under the West Virginia Public  
14 Employees Retirement System, the West Virginia State Teachers'  
15 Retirement System and all forms of military retirement, including  
16 regular Armed Forces, Reserves and National Guard, including any  
17 survivorship annuities, ~~derived therefrom~~ to the extent includable  
18 in gross income for federal income tax purposes. ~~Provided, That~~  
19 Notwithstanding any contrary provisions in this code, ~~to the~~  
20 ~~contrary~~ this modification ~~shall be~~ is limited to the first ~~\$2,000~~  
21 \$20,000 of benefits received under the West Virginia Public  
22 Employees Retirement System, the West Virginia State Teachers'  
23 Retirement System, ~~and,~~ including any survivorship annuities,  
24 ~~derived therefrom~~ to the extent includable in gross income for

1 federal income tax purposes for taxable years beginning after  
2 December 31, ~~one thousand nine hundred eighty-six~~ 2012 and the  
3 first ~~two thousand dollars~~ \$20,000 of benefits received under any  
4 federal retirement system to which Title 4 U.S.C. §111 applies.  
5 ~~Provided, however, That~~ However, the total modification under this  
6 ~~paragraph shall~~ subdivision may not exceed ~~two thousand dollars~~  
7 \$20,000 per person receiving retirement benefits and this  
8 limitation ~~shall~~ applies to all returns or amended returns filed  
9 for taxable years beginning after December 31, ~~one thousand nine~~  
10 ~~hundred eighty-eight~~ 2012;

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

19 (7) (A) For taxable years beginning after December 31, 2000,  
20 and ending prior to January 1, 2003, an amount equal to two percent  
21 multiplied by the number of years of active duty in the Armed  
22 Forces of the United States of America, ~~with the product thereof~~  
23 multiplied by the first \$30,000 of military retirement income,  
24 including retirement income from the regular Armed Forces, Reserves

1 and National Guard paid by the United States or by this state after  
2 December 31, 2000, including any survivorship annuities, to the  
3 extent included in gross income for federal income tax purposes for  
4 the taxable year. For taxable years ending after December 31,  
5 2012, persons claiming a modification for military retirement  
6 pursuant to subdivision (5), subsection (c) of this section and  
7 modification under this subdivision may receive a combined  
8 modification of \$22,000 total under the two subdivisions.

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~~ If any ~~of the~~ provision of this  
16 subdivision ~~are~~ is found by a court of competent jurisdiction to  
17 violate ~~either~~ the Constitution of this state or of the United  
18 States or is ~~held to be~~ extended to persons other than specified in  
19 this subdivision, this subdivision ~~shall~~ becomes ~~null and~~ void. ~~by~~  
20 ~~operation of law~~

21 (8) Federal adjusted gross income in the amount of \$8,000  
22 received from any source after December 31, 1986, by any person who  
23 has attained the age of sixty-five on or before the last day of the  
24 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  
8 is acceptable. ~~Provided, however, That~~ However:

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,  
11 no deduction ~~shall be~~ is 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~~ is limited to the  
16 difference between \$8,000 and the sum of modifications under  
17 subdivisions (1), (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~~ However:

24 (i) Where the total modification under subdivisions (1), (2),

1 ~~(5)~~, (6), (7) and (8) of this subsection is \$8,000 or more, no  
2 deduction ~~shall be~~ is allowed under this subdivision; and

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

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

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

24 (i) The term "severance wages" means any monetary compensation



1 paid by the employer in the taxable year as a result of permanent  
2 termination from employment in excess of regular annual wages or  
3 regular annual salary;

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

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

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

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

23 (d) *Modification for West Virginia fiduciary adjustment.* --  
24 ~~There shall be added to or subtracted from federal adjusted gross~~

1 ~~income, as the case may be, the~~ A taxpayer's share, as beneficiary  
2 of an estate or trust, of the West Virginia fiduciary adjustment  
3 determined under section nineteen of this article is added to or  
4 subtracted from federal adjusted gross income, as the case may be.

5 (e) *Partners and S corporation shareholders.* -- The amounts of  
6 modifications required to be made under this section by a partner  
7 or an S corporation shareholder, ~~which~~ relating to items of income,  
8 gain, loss or deduction of a partnership or an S corporation, ~~shall~~  
9 ~~be~~ is determined under section seventeen of this article.

10 (f) *Husband and wife.* -- If husband and wife determine their  
11 federal income tax on a joint return but determine their West  
12 Virginia income taxes separately, they shall determine their West  
13 Virginia adjusted gross incomes separately as if their federal  
14 adjusted gross incomes had been determined separately.

15 (g) *Effective date.* -- (1) Changes in the language of this  
16 section enacted in the year 2000 ~~shall~~ applies to taxable years  
17 beginning after December 31, 2000.

18 (2) Changes in the language of this section enacted in the  
19 year 2002 ~~shall~~ applies to taxable years beginning after December  
20 31, 2002.

21 (3) Changes in the language of this section enacted in the  
22 year 2012 apply to taxable years beginning after December 31, 2012.

NOTE: The purpose of this bill is to reduce state income taxes

for state and federal retirees by increasing the exemption on retirement income in calculating the federal gross income for state personal income tax purposes.

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