

Senate Bill No. 513

(By Senators Tucker and Williams)

[Introduced February 3, 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; and to amend and reenact §20-7-1 of said
code, all relating to pension benefits exempt from state
income taxation; and including Division of Natural Resources
police into the class of law-enforcement officers exempted.

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; and that §20-7-1 of said code be amended
and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

**§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 added to federal adjusted gross income unless
6 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 this state is a party;

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

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

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

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

1 federal taxable year;

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

6 (7) Amounts withdrawn from a medical savings account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

11 (c) *Modifications reducing federal adjusted gross income.* --
12 There shall be subtracted from federal adjusted gross income to the
13 extent included therein:

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

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

1 30, 1987;

2 (3) Any amount included in federal adjusted gross income for
3 federal income tax purposes for the taxable year that is not
4 included in federal adjusted gross income under this article for
5 the taxable year;

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

10 (5) Annuities, retirement allowances, returns of contributions
11 and any other benefit received under the West Virginia Public
12 Employees Retirement System, the West Virginia State Teachers
13 Retirement System and all forms of military retirement, including
14 regular Armed Forces, Reserves and National Guard, including any
15 survivorship annuities derived therefrom, to the extent includable
16 in gross income for federal income tax purposes: *Provided*, That
17 notwithstanding any provisions in this code to the contrary this
18 modification shall be limited to the first \$2,000 of benefits
19 received under the West Virginia Public Employees Retirement
20 System, the West Virginia State Teachers Retirement System and,
21 including any survivorship annuities derived therefrom, to the
22 extent includable in gross income for federal income tax purposes
23 for taxable years beginning after December 31, 1986; and the first
24 \$2,000 of benefits received under any federal retirement system to

1 which Title 4 U.S.C. §111 applies: *Provided, however,* That the
2 total modification under this paragraph shall not exceed \$2,000 per
3 person receiving retirement benefits and this limitation shall
4 apply to all returns or amended returns filed after December 31,
5 1988;

6 (6) Retirement income received in the form of pensions and
7 annuities after December 31, 1979, under any West Virginia police,
8 West Virginia Firemen's Retirement System or the West Virginia
9 State Police Death, Disability and Retirement Fund, the West
10 Virginia State Police Retirement System, ~~or~~ the West Virginia
11 Deputy Sheriff Retirement System, or the West Virginia Public
12 Employees Retirement System if paid to police officers retired from
13 the Department of Natural Resources, including those formerly
14 classified as conservation officers, including any survivorship
15 annuities derived from any of these programs, to the extent
16 includable in gross income for federal income tax purposes;

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

1 extent included in gross income for federal income tax purposes for
2 the taxable year.

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

9 (C) In the event that any of the provisions of this
10 subdivision are found by a court of competent jurisdiction to
11 violate either the Constitution of this state or of the United
12 States, or is held to be extended to persons other than specified
13 in this subdivision, this subdivision shall become null and void by
14 operation of law.

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

1 of the form filed for the federal disability income tax exclusion
2 is acceptable: *Provided, however, That:*

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

6 (ii) Where the total modification under subdivisions (1), (2),
7 (5), (6) and (7) of this subsection is less than \$8,000 per person,
8 the total modification allowed under this subdivision for all gross
9 income received by that person shall be limited to the difference
10 between \$8,000 and the sum of modifications under subdivisions (1),
11 (2), (5), (6) and (7) of this subsection;

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

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

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

1 difference between \$8,000 and the sum of subdivisions (1), (2),
2 (5), (6), (7) and (8) of this subsection;

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

13 (11) For the 2006 taxable year only, severance wages received
14 by a taxpayer from an employer as the result of the taxpayer's
15 permanent termination from employment through a reduction in force
16 and through no fault of the employee, not to exceed \$30,000. For
17 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) 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 (2) Changes in the language of this section enacted in the
12 year 2002 shall apply to taxable years beginning after December 31,
13 2002.

14 (3) Changes in the language of this section enacted in the
15 year 2012 shall apply to taxable years beginning after December 31,
16 2012.

17 **CHAPTER 20. NATURAL RESOURCES.**

18 **ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

19 **§20-7-1. Chief natural resources police officer; natural resources**
20 **police officers; special and emergency natural**
21 **resources police officers; subsistence allowance;**
22 **expenses.**

23 (a) The division's law-enforcement policies, practices and

1 programs are under the immediate supervision and direction of the
2 division law-enforcement officer selected by the director and
3 designated as chief natural resources police officer as provided in
4 section thirteen, article one of this chapter.

5 (b) Under the supervision of the director, the chief natural
6 resources police officer shall organize, develop and maintain
7 law-enforcement practices, means and methods geared, timed and
8 adjustable to seasonal, emergency and other needs and requirements
9 of the division's comprehensive natural resources program. All
10 division personnel detailed and assigned to law-enforcement duties
11 and services under this section shall be known and designated as
12 natural resources police officers and are under the immediate
13 supervision and direction of the chief natural resources police
14 officer except as otherwise provided. All natural resources police
15 officers shall be trained, equipped and conditioned for duty and
16 services wherever and whenever required by division law-enforcement
17 needs.

18 (c) The chief natural resources police officer, acting under
19 supervision of the director, is authorized to select and appoint
20 emergency natural resources police officers for a limited period
21 for effective enforcement of the provisions of this chapter when
22 considered necessary because of emergency or other unusual
23 circumstances. The emergency natural resources police officers
24 shall be selected from qualified civil service personnel of the

1 division, except in emergency situations and circumstances when the
2 director may designate officers, without regard to civil service
3 requirements and qualifications, to meet law-enforcement needs.
4 Emergency natural resources police officers shall exercise all
5 powers and duties prescribed in section four of this article for
6 full-time salaried natural resources police officers except the
7 provisions of subdivision (8) of said section.

8 (d) The chief natural resources police officer, acting under
9 supervision of the director, is also authorized to select and
10 appoint as special natural resources police officers any full-time
11 civil service employee who is assigned to, and has direct
12 responsibility for management of, an area owned, leased or under
13 the control of the division and who has satisfactorily completed a
14 course of training established and administered by the chief
15 natural resources police officer, when the action is considered
16 necessary because of law-enforcement needs. The powers and duties
17 of a special natural resources police officer, appointed under this
18 provision, is the same within his or her assigned area as
19 prescribed for full-time salaried natural resources police
20 officers. The jurisdiction of the person appointed as a special
21 natural resources police officer, under this provision, shall be
22 limited to the division area or areas to which he or she is
23 assigned and directly manages.

24 (e) The Director of the Division of Forestry is authorized to

1 appoint and revoke Division of Forestry special natural resources
2 police officers who are full-time civil service personnel who have
3 satisfactorily completed a course of training as required by the
4 Director of the Division of Forestry. The jurisdiction, powers and
5 duties of Division of Forestry special natural resources police
6 officers are set forth by the Director of the Division of Forestry
7 pursuant to article three of this chapter, and articles one-a and
8 one-b, chapter nineteen of this code.

9 (f) The chief natural resources police officer, with the
10 approval of the director, has the power and authority to revoke any
11 appointment of an emergency natural resources police officer or of
12 a special natural resources police officer at any time.

13 (g) Natural resources police officers are subject to seasonal
14 or other assignment and detail to duty whenever and wherever
15 required by the functions, services and needs of the division.

16 (h) The chief natural resources police officer shall designate
17 the area of primary residence of each natural resources police
18 officer, including himself or herself. Since the area of business
19 activity of the division is actually anywhere within the
20 territorial confines of the State of West Virginia, actual expenses
21 incurred shall be paid whenever the duties are performed outside
22 the area of primary assignment and still within the state.

23 (i) Natural resources police officers shall receive, in
24 addition to their base pay salary, a minimum monthly subsistence

1 allowance for their required telephone service, dry cleaning or
2 required uniforms, and meal expenses while performing their regular
3 duties in their area of primary assignment in the amount of \$130
4 each month. This subsistence allowance does not apply to special
5 or emergency natural resources police officers appointed under this
6 section.

7 (j) After June 30, 2010, all those full time law-enforcement
8 officers employed by the Division of Natural Resources as
9 conservation officers shall be titled and known as natural
10 resources police officers. Wherever used in this code the term
11 "conservation officer," or its plural, means "natural resources
12 police officer," or its plural, respectively.

13 ~~(k) Notwithstanding any provision of this code to the~~
14 ~~contrary, the provisions of subdivision six, subsection c, section~~
15 ~~twelve, article twenty-one, chapter eleven of this code are~~
16 ~~inapplicable to pensions of natural resources police officers paid~~
17 ~~through the Public Employees Retirement System.~~

NOTE: The purpose of this bill is to treat natural resources police like all other law enforcement and exempt them from state income tax.

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