

Senate Bill No. 133

(By Senators Yost, Unger and Fitzsimmons)

[Introduced February 13, 2013; referred to the Committee on
Military; 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 exempting all military, National
Guard and reserve income from state income taxes.

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
resident individual means his or her federal adjusted gross income
as defined in the laws of the United States for the taxable year

1 with the modifications specified in this section.

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

3 There shall be added to federal adjusted gross income unless
4 already included therein the following items:

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

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

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

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

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

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

5 (7) Amounts withdrawn from a medical savings account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

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

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

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

1 \$2,000 of benefits received under any federal retirement system to
2 which Title 4 U.S.C. §111 applies: *Provided, however,* That the
3 total modification under this paragraph shall not exceed \$2,000 per
4 person receiving retirement benefits and this limitation shall
5 apply to all returns or amended returns filed after December 31,
6 1988;

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

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

1 the taxable year.

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

8 (C) For taxable years beginning after December 31, 2012, and
9 continuing every year thereafter all military income, including
10 income from regular Armed Forces, Reserves and National Guard paid
11 by the United States or by this state, to the extent included in
12 gross income for federal income tax purposes for all taxable years
13 after December 31, 2012.

14 ~~(C)~~ (D) In the event that any of the provisions of this
15 subdivision are found by a court of competent jurisdiction to
16 violate either the Constitution of this state or of the United
17 States, or is held to be extended to persons other than specified
18 in this subdivision, this subdivision shall become null and void by
19 operation of law.

20 (8) Federal adjusted gross income in the amount of \$8,000
21 received from any source after December 31, 1986, by any person who
22 has attained the age of sixty-five on or before the last day of the
23 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:*

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 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 limited to the difference
16 between \$8,000 and the sum of modifications under subdivisions (1),
17 (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:*

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

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

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

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

1 purposes of this subdivision:

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

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

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

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

23 (12) Any other income which this state is prohibited from

1 taxing under the laws of the United States.

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

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

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

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

20 (2) Changes in the language of this section enacted in the
21 year 2002 shall apply to taxable years beginning after December 31,
22 2002.

NOTE: The purpose of this bill is to exempt all military, National Guard and Reserve income from state income taxes.

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