

H. B. 2067

(By Delegate Caputo)

[Introduced January 15, 2015; referred to the

Committee on Pensions and Retirement then 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 in 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 resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

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

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

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

8 (3) Any deduction allowed when determining federal adjusted gross income for federal
9 income tax purposes for the taxable year that is not allowed as a deduction under this article for the
10 taxable year;

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

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

17 (6) The amount of a lump sum distribution for which the taxpayer has elected under Section
18 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income
19 tax purposes; and

20 (7) Amounts withdrawn from a medical savings account established by or for an individual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

1 those sections.

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

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

6 (2) Interest or dividend income on obligations or securities of any authority, commission or
7 instrumentality of the United States or of the State of West Virginia to the extent includable in gross
8 income for federal income tax purposes but exempt from state income taxes under the laws of the
9 United States or of the State of West Virginia, including federal interest or dividends paid to
10 shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code
11 for taxable years ending after June 30, 1987;

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

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

18 (5) Annuities, retirement allowances, returns of contributions and any other benefit received
19 under the West Virginia Public Employees Retirement System, the West Virginia State Teachers
20 Retirement System and all forms of military retirement, including regular Armed Forces, Reserves
21 and National Guard, including any survivorship annuities derived therefrom, to the extent includable
22 in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in

1 this code to the contrary this modification shall be limited to the first \$2,000 of benefits received
2 under the West Virginia Public Employees Retirement System, the West Virginia State Teachers
3 Retirement System and, including any survivorship annuities derived therefrom, to the extent
4 includable in gross income for federal income tax purposes for taxable years beginning after
5 December 31, 1986; and the first \$2,000 of benefits received under any federal retirement system
6 to which Title 4 U.S.C. §111 applies: *Provided, however,* That the total modification under this
7 paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall
8 apply to all returns or amended returns filed after December 31, 1988;

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

17 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1,
18 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed
19 Forces of the United States of America with the product thereof multiplied by the first \$30,000 of
20 military retirement income, including retirement income from the regular Armed Forces, Reserves
21 and National Guard paid by the United States or by this state after December 31, 2000, including any
22 survivorship annuities, to the 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 first \$20,000 of military
3 retirement income, including retirement income from the regular Armed Forces, Reserves and
4 National Guard paid by the United States or by this state after December 31, 2002, including any
5 survivorship annuities, to the extent included in gross income for federal income tax purposes for
6 the taxable year.

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

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

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

21 (ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection
22 is less than \$8,000 per person, the total modification allowed under this subdivision for all gross

1 income received by that person shall be limited to the difference between \$8,000 and the sum of
2 modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

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

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

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

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

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

1 subdivision:

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

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

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

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

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

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

22 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to

1 be made under this section by a partner or an S corporation shareholder, which relate to items of
2 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
3 section seventeen of this article.

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

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

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

12 (3) Changes in the language of this section enacted in the year 2015 shall apply to taxable
13 years beginning after December 31, 2015.

14 CHAPTER 20. NATURAL RESOURCES.

15 ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

16 §20-7-1. Chief natural resources police officer; natural resources police officers; special and 17 emergency natural resources police officers; subsistence allowance; expenses.

18 (a) The division's law-enforcement policies, practices and programs are under the immediate
19 supervision and direction of the division law-enforcement officer selected by the director and
20 designated as chief natural resources police officer as provided in section thirteen, article one of this
21 chapter.

22 (b) Under the supervision of the director, the chief natural resources police officer shall

1 organize, develop and maintain law-enforcement practices, means and methods geared, timed and
2 adjustable to seasonal, emergency and other needs and requirements of the division's comprehensive
3 natural resources program. All division personnel detailed and assigned to law-enforcement duties
4 and services under this section shall be known and designated as natural resources police officers
5 and are under the immediate supervision and direction of the chief natural resources police officer
6 except as otherwise provided. All natural resources police officers shall be trained, equipped and
7 conditioned for duty and services wherever and whenever required by division law-enforcement
8 needs.

9 (c) The chief natural resources police officer, acting under supervision of the director, is
10 authorized to select and appoint emergency natural resources police officers for a limited period for
11 effective enforcement of the provisions of this chapter when considered necessary because of
12 emergency or other unusual circumstances. The emergency natural resources police officers shall
13 be selected from qualified civil service personnel of the division, except in emergency situations and
14 circumstances when the director may designate officers, without regard to civil service requirements
15 and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall
16 exercise all powers and duties prescribed in section four of this article for full-time salaried natural
17 resources police officers except the provisions of subdivision (8) of said section.

18 (d) The chief natural resources police officer, acting under supervision of the director, is also
19 authorized to select and appoint as special natural resources police officers any full-time civil service
20 employee who is assigned to, and has direct responsibility for management of, an area owned, leased
21 or under the control of the division and who has satisfactorily completed a course of training
22 established and administered by the chief natural resources police officer, when the action is

1 considered necessary because of law-enforcement needs. The powers and duties of a special natural
2 resources police officer, appointed under this provision, is the same within his or her assigned area
3 as prescribed for full-time salaried natural resources police officers. The jurisdiction of the person
4 appointed as a special natural resources police officer, under this provision, shall be limited to the
5 division area or areas to which he or she is assigned and directly manages.

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

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

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

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

22 (i) Natural resources police officers shall receive, in addition to their base pay salary, a

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

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

9 ~~(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision~~
10 ~~six, subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable to~~
11 ~~pensions of natural resources police officers paid 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 their pension benefits 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.