

Senate Bill No. 85

(By Senators Yost, Beach, D. Hall, Laird, Facemire and Romano)

[Introduced January 14, 2015; 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 personal income tax; and increasing adjustments to gross income for military, National Guard and reserve retirement income of resident individuals.

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 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

1 of said chapter that are used for a purpose other than payment of medical expenses, as defined in
2 those sections.

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

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

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

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

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

19 (5) Annuities, retirement allowances, returns of contributions and any other benefit received
20 under the West Virginia Public Employees Retirement System, the West Virginia State Teachers
21 Retirement System and all forms of military retirement, including regular Armed Forces, Reserves

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

11 (6) Retirement income received in the form of pensions and annuities after December 31,
12 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West
13 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
14 Retirement System or the West Virginia Deputy Sheriff Retirement System, 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

1 survivorship annuities, to the 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~~ 2015, the first ~~\$20,000~~ \$25,000 of
4 military retirement income, including retirement income from the regular Armed Forces, Reserves
5 and National Guard paid by the United States or by this state after December 31, ~~2002~~ 2015,
6 including any survivorship annuities, to the extent included in gross income for federal income tax
7 purposes for the taxable year;

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

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

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

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

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

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

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

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

1 computed separately for each individual;

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase adjustments to gross income for military, National Guard and Reserve retirement income of resident individuals from \$20,000 to \$25,000.

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