

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2113

2015 Carryover

(BY DELEGATES RODIGHIERO, HICKS, PERDUE, MARCUM,

REYNOLDS,

ELDRIDGE AND MOYE)

[Introduced January 13, 2016; referred to the

Committee on Pensions and Retirement then

Finance.]

1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating
 2 to personal income tax; and increasing the amount of retirement income to be excluded
 3 from the gross income of individuals receiving retirement benefits under the West Virginia
 4 Public Employees Retirement System or the West Virginia State Teachers Retirement
 5 System.

Be it enacted by the Legislature of West Virginia:

1 That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* -- The West Virginia adjusted gross income of a resident individual means
 2 his or her federal adjusted gross income as defined in the laws of the United States for the
 3 taxable year with the modifications specified in this section.

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

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

9 (2) Interest or dividend income on obligations or securities of any authority, commission
 10 or instrumentality of the United 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 gross income for federal
 13 income tax purposes for the taxable year that is not allowed as a deduction under this article for
 14 the taxable year;

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

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

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

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

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

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

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

38 (3) Any amount included in federal adjusted gross income for federal income tax

39 purposes for the taxable year that is not included in federal adjusted gross income under this
40 article for the taxable year;

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

44 (5) Annuities, retirement allowances, returns of contributions and any other benefit
45 received under the West Virginia Public Employees Retirement System, the West Virginia State
46 Teachers Retirement System and all forms of military retirement, including regular Armed
47 Forces, Reserves and National Guard, including any survivorship annuities derived therefrom,
48 to the extent includable in gross income for federal income tax purposes: *Provided, That*
49 notwithstanding any provisions in this code to the contrary this modification shall be limited to
50 the first ~~\$2,000~~ \$20,000 of benefits received under the West Virginia Public Employees
51 Retirement System, the West Virginia State Teachers Retirement System and, including any
52 survivorship annuities derived therefrom, to the extent includable in gross income for federal
53 income tax purposes for taxable years beginning after December 31, 1986; and the first \$2,000
54 of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies:
55 *Provided, however,* That the total modification under this paragraph shall not exceed \$2,000 per
56 person receiving federal retirement benefits and this limitation shall apply to all returns or
57 amended returns filed after December 31, 1988;

58 (6) Retirement income received in the form of pensions and annuities after December
59 31, 1979, under any West Virginia Police, West Virginia Firemen's Retirement System or the
60 West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
61 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any
62 survivorship annuities derived from any of these programs, to the extent includable in gross

63 income for federal income tax purposes;

64 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to
65 January 1, 2003, an amount equal to two percent multiplied by the number of years of active
66 duty in the Armed Forces of the United States of America with the product thereof multiplied by
67 the first \$30,000 of military retirement income, including retirement income from the regular
68 Armed Forces, reserves and National Guard paid by the United States or by this state after
69 December 31, 2000, including any survivorship annuities, to the extent included in gross income
70 for federal income tax purposes for the taxable year.

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

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

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

87 form filed for the federal disability income tax exclusion is acceptable: *Provided, however,*
88 That:

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

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

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

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

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

106 (10) Contributions from any source to a medical savings account established by or for
107 the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or
108 section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent
109 includable in federal adjusted gross income for federal tax purposes: *Provided, That the*
110 amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000

111 plus interest earned on the account. For married individuals filing a joint return, the maximum
112 deduction is computed separately for each individual;

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

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

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

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

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

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

134 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or

135 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
136 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under
137 section nineteen of this article.

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

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

146 (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year
147 2000 shall apply to taxable years beginning after December 31, 2000.

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

150 (3) Changes in the language of this section enacted in the year 2015 shall apply to
151 taxable years beginning after December 31, 2014.

152 NOTE: The purpose of this bill is to increase the amount of retirement income from
153 \$2,000 to \$20,000 that may be excluded from the gross income for individuals receiving
154 retirement benefits under the West Virginia Public Employees Retirement System and the West
155 Virginia State Teachers Retirement System.

156

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

