

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 101

By Senators Nelson, Roberts, Queen, Woelfel,
Chapman, Taylor, Smith, Stuart, and Rucker

[Introduced January 11, 2023; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating
 2 to exemptions from personal income tax; providing for an exemption for members of
 3 certain uniformed services; exempting Social Security benefits from personal income tax;
 4 clarifying that tier one railroad retirement benefits are not subject to personal income tax;
 5 specifying an effective date; and removing obsolete language.

Be it enacted by the Legislature of West Virginia:

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 his
 2 or her federal adjusted gross income as defined in the laws of the United States for the taxable
 3 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 or
 10 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 the
 14 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 an

19 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 individual
25 under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of
26 medical expenses, as defined in those sections.

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

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

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

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

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

43 (5) Annuities, retirement allowances, returns of contributions and any other benefit
44 received under the West Virginia Public Employees Retirement System, and the West Virginia

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

55 (6) Retirement income received in the form of pensions and annuities after December 31,
56 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West
57 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
58 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any
59 survivorship annuities derived from any of these programs, to the extent includable in gross
60 income for federal income tax purposes;

61 (7)(A) For taxable years beginning after December 31, 2000, and ending prior to January
62 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the
63 Armed Forces of the United States of America with the product thereof multiplied by the first
64 \$30,000 of military retirement income, including retirement income from the regular Armed Forces,
65 Reserves and National Guard paid by the United States or by this state after December 31, 2000,
66 including any survivorship annuities, to the extent included in gross income for federal income tax
67 purposes for the taxable year.

68 (B) For taxable years beginning after December 31, 2000, the first \$20,000 of military
69 retirement income, including retirement income from the regular Armed Forces, Reserves and
70 National Guard paid by the United States or by this state after December 31, 2002, including any

71 survivorship annuities, to the extent included in gross income for federal income tax purposes for
72 the taxable year.

73 (C) For taxable years beginning after December 31, 2017, military retirement income,
74 including retirement income from the regular Armed Forces, Reserves and National Guard paid by
75 the United States or by this state after December 31, 2017, including any survivorship annuities, to
76 the extent included in federal adjusted gross income for the taxable year. For taxable years
77 beginning after December 31, 2018, retirement income from the uniformed services, including the
78 Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic
79 Atmospheric Administration, reserves, and National Guard, paid by the United States or by this
80 state after December 31, 2018, including any survivorship annuities, to the extent included in
81 federal adjusted gross income for the taxable year.

82 (D) ~~In the event that~~ If any of the provisions of this subdivision are found by a court of
83 competent jurisdiction to violate either the Constitution of this state or of the United States, or is
84 held to be extended to persons other than specified in this subdivision, this subdivision shall
85 become ~~null and~~ void by operation of law.

86 (8) Decreasing modification for Social Security income.

87 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of
88 Social Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited
89 to, Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
90 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
91 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.* included in
92 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
93 from federal adjusted gross income when determining West Virginia taxable income subject to the
94 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

95 (B) For taxable years beginning on or after January 1, 2021, 65 percent of the Social
96 Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,

97 Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
98 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
99 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in
100 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
101 from federal adjusted gross income when determining West Virginia taxable income subject to the
102 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

103 (C) For taxable years beginning on or after January 1, 2022, 100 percent of the Social
104 Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,
105 Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
106 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
107 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in
108 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
109 from federal adjusted gross income when determining West Virginia taxable income subject to the
110 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

111 (D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-
112 12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married
113 couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual
114 or a married individual filing a separate return: Provided, That for taxable years beginning on or
115 after January 1, 2024, this deduction is allowed without any income restrictions.

116 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after
117 December 31, 1986, by any person who has attained the age of 65 on or before the last day of the
118 taxable year, or by any person certified by proper authority as permanently and totally disabled,
119 regardless of age, on or before the last day of the taxable year, to the extent includable in federal
120 adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical
121 certification from a prior year and he or she is still permanently and totally disabled, a copy of the
122 original certificate is acceptable as proof of disability. A copy of the form filed for the federal

123 disability income tax exclusion is acceptable: *Provided, however, That:*

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

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

131 (10) Federal adjusted gross income in the amount of \$8,000 received from any source after
132 December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who
133 had been certified as permanently and totally disabled, to the extent includable in federal adjusted
134 gross income for federal tax purposes: *Provided, That:*

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

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

141 (11) Contributions from any source to a medical savings account established by or for the
142 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to
143 the extent includable in federal adjusted gross income for federal tax purposes: *Provided, That* the
144 amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000
145 plus interest earned on the account. For married individuals filing a joint return, the maximum
146 deduction is computed separately for each individual; and

147 (12) Any other income which this state is prohibited from taxing under the laws of the
148 United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of

149 the Internal Revenue Code.

150 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or
151 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
152 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
153 21-19 of this code.

154 (e) Partners and S corporation shareholders. — The amounts of modifications required to
155 be made under this section by a partner or an S corporation shareholder, which relate to items of
156 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
157 §11-21-17 of this code.

158 (f) Husband and wife. — If husband and wife determine their federal income tax on a joint
159 return but determine their West Virginia income taxes separately, they shall determine their West
160 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
161 determined separately.

162 (g) Effective date. —

163 (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable
164 years beginning after December 31, 2000.

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

167 (3) Changes in the language of this section enacted in the year 2019 shall apply to taxable
168 years beginning after December 31, 2018.

NOTE: The purpose of this bill is to fully eliminate state income tax for Social Security benefits received by taxpayers for taxable years beginning in 2023.

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