

SB 93

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



## ENROLLED

SENATE BILL NO. 93

(By Senator Craig, et al)



PASSED February 13, 1996  
In Effect from Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

**ENROLLED**

**Senate Bill No. 93**

(BY SENATORS CRAIGO, BLATNIK, CHAFIN, DUGAN, HELMICK,  
KIMBLE, LOVE, MACNAUGHTAN, MANCHIN, MINEAR, PLYMALE,  
SHARPE, WALKER AND WHITLOW)

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[Passed February 13, 1996; in effect from passage.]

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AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to updating meaning of certain terms used in the personal income tax; making such updating retroactive; preserving law in effect for each prior tax year for such year; defining certain additional terms; making technical corrections in the definition of West Virginia adjusted gross income; deleting obsolete language; and specifying effective date.

*Be it enacted by the Legislature of West Virginia:*

That sections nine and twelve, article twenty-one, chapter

eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-9. Meaning of terms.**

1 (a) Any term used in this article shall have the same  
2 meaning as when used in a comparable context in the  
3 laws of the United States relating to income taxes, unless  
4 a different meaning is clearly required. Any reference in  
5 this article to the laws of the United States shall mean  
6 the provisions of the Internal Revenue Code of 1986, as  
7 amended, and such other provisions of the laws of the  
8 United States as relate to the determination of income  
9 for federal income tax purposes. All amendments made  
10 to the laws of the United States prior to the first day of  
11 January, one thousand nine hundred ninety-six, shall be  
12 given effect in determining the taxes imposed by this  
13 article for any taxable year beginning the first day of  
14 January, one thousand nine hundred ninety-five, or  
15 thereafter, but no amendment to the laws of the United  
16 States made on or after the first day of January, one  
17 thousand nine hundred ninety-six, shall be given any  
18 effect. The exception to the preceding rule is the change  
19 in federal income tax law restoring subsection (l),  
20 Section 162 of the Internal Revenue Code for taxable  
21 years beginning on or after the first day of January, one  
22 thousand nine hundred ninety-four, which shall be  
23 allowed under this article for taxable years beginning on  
24 or after the first day of January, one thousand nine  
25 hundred ninety-four.

26 (b) *Medical savings accounts.* — The term “taxable  
27 trust” does not include a medical savings account  
28 established pursuant to section twenty, article fifteen or  
29 section fifteen, article sixteen, both of chapter thirty-  
30 three of this code. Employer contributions to a medical  
31 savings account established pursuant to said sections are  
32 not “wages” for purposes of withholding under section  
33 seventy-one of this article.

34 (c) *Surtax.* — The term “surtax” means the twenty  
35 percent additional tax imposed on taxable withdrawals  
36 from a medical savings account under section twenty,  
37 article fifteen, chapter thirty-three of this code, and the  
38 twenty percent additional tax imposed on taxable  
39 withdrawals from a medical savings account under  
40 section fifteen, article sixteen of said chapter, which are  
41 collected by the tax commissioner as tax collected under  
42 this article.

43 (d) *Effective date.* — The amendments to this section  
44 enacted in the year one thousand nine hundred ninety-  
45 six shall be retroactive and shall apply to taxable years  
46 beginning on or after the first day of January, one  
47 thousand nine hundred ninety-five, except as otherwise  
48 provided in subsection (a) of this section, to the extent  
49 allowable under federal income tax law. With respect to  
50 taxable years that begin prior to the first day of January,  
51 one thousand nine hundred ninety-four, the law in effect  
52 for each of those years shall be fully preserved as to such  
53 year.

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

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

6 (b) *Modifications increasing federal adjusted gross*  
7 *income.* — There shall be added to federal adjusted gross  
8 income unless already included therein the following  
9 items:

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

14 (2) Interest or dividend income on obligations or  
15 securities of any authority, commission or instrumental-

16 ity of the United States, which the laws of the United  
17 States exempt from federal income tax but not from  
18 state income taxes;

19 (3) Any deduction allowed when determining federal  
20 adjusted gross income for federal income tax purposes  
21 for the taxable year that is not allowed as a deduction  
22 under this article for the taxable year;

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

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

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

36 (7) Amounts withdrawn from a medical savings ac-  
37 count established by or for an individual under section  
38 twenty, article fifteen or section fifteen, article sixteen,  
39 both of chapter thirty-three of this code, that are used  
40 for a purpose other than payment of medical expenses,  
41 as defined in those sections.

42 (c) *Modifications reducing federal adjusted gross*  
43 *income.* — There shall be subtracted from federal  
44 adjusted gross income to the extent included therein:

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

48 (2) Interest or dividend income on obligations or  
49 securities of any authority, commission or instrumental-  
50 ity of the United States or of the state of West Virginia  
51 to the extent includable in gross income for federal

52 income tax purposes but exempt from state income taxes  
53 under the laws of the United States or of the state of  
54 West Virginia, including federal interest or dividends  
55 paid to shareholders of a regulated investment company,  
56 under Section 852 of the Internal Revenue Code for  
57 taxable years ending after the thirtieth day of June, one  
58 thousand nine hundred eighty-seven;

59 (3) Any amount included in federal adjusted gross  
60 income for federal income tax purposes for the taxable  
61 year that is not included in federal adjusted gross income  
62 under this article for the taxable year;

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

67 (5) Annuities, retirement allowances, returns of contri-  
68 butions and any other benefit received under the West  
69 Virginia public employees retirement system, the West  
70 Virginia state teachers retirement system and all forms  
71 of military retirement, including regular armed forces,  
72 reserves and national guard, including any survivorship  
73 annuities derived therefrom, to the extent includable in  
74 gross income for federal income tax purposes: *Provided,*  
75 That notwithstanding any provisions in this code to the  
76 contrary this modification shall be limited to the first  
77 two thousand dollars of benefits received under the West  
78 Virginia public employees retirement system, the West  
79 Virginia state teachers retirement system and all forms  
80 of military retirement including regular armed forces,  
81 reserves and national guard, including any survivorship  
82 annuities derived therefrom, to the extent includable in  
83 gross income for federal income tax purposes for taxable  
84 years beginning after the thirty-first day of December,  
85 one thousand nine hundred eighty-six; and the first two  
86 thousand dollars of benefits received under any federal  
87 retirement system to which Title 4 U.S.C. §111 applies:  
88 *Provided, however,* That the total modification under  
89 this paragraph shall not exceed two thousand dollars per

90 person receiving retirement benefits and this limitation  
91 shall apply to all returns or amended returns filed after  
92 the last day of December, one thousand nine hundred  
93 eighty-eight;

94 (6) Retirement income received in the form of pensions  
95 and annuities after the thirty-first day of December, one  
96 thousand nine hundred seventy-nine, under any West  
97 Virginia police, West Virginia firemen's retirement  
98 system or the West Virginia department of public safety  
99 death, disability and retirement fund, including any  
100 survivorship annuities derived therefrom, to the extent  
101 includable in gross income for federal income tax  
102 purposes;

103 (7) Federal adjusted gross income in the amount of  
104 eight thousand dollars received from any source after the  
105 thirty-first day of December, one thousand nine hundred  
106 eighty-six, by any person who has attained the age of  
107 sixty-five on or before the last day of the taxable year, or  
108 by any person certified by proper authority as perma-  
109 nently and totally disabled, regardless of age, on or  
110 before the last day of the taxable year, to the extent  
111 includable in federal adjusted gross income for federal  
112 tax purposes: *Provided*, That if a person has a medical  
113 certification from a prior year and he is still permanently  
114 and totally disabled, a copy of the original certificate is  
115 acceptable as proof of disability. A copy of the form  
116 filed for the federal disability income tax exclusion is  
117 acceptable: *Provided, however*, That:

118 (i) Where the total modification under subdivisions (1),  
119 (2), (5) and (6) of this subsection is eight thousand dollars  
120 per person or more, no deduction shall be allowed under  
121 this subdivision; and

122 (ii) Where the total modification under subdivisions (1),  
123 (2), (5) and (6) of this subsection is less than eight thou-  
124 sand dollars per person, the total modification allowed  
125 under this subdivision for all gross income received by  
126 that person shall be limited to the difference between  
127 eight thousand dollars and the sum of modifications

128 under subdivisions (1), (2), (5) and (6);

129 (8) Federal adjusted gross income in the amount of  
130 eight thousand dollars received from any source after the  
131 thirty-first day of December, one thousand nine hundred  
132 eighty-six, by the surviving spouse of any person who  
133 had attained the age of sixty-five or who had been  
134 certified as permanently and totally disabled, to the  
135 extent includable in federal adjusted gross income for  
136 federal tax purposes: *Provided*, That:

137 (i) Where the total modification under subdivisions (1),  
138 (2), (5), (6) and (7) of this subsection is eight thousand  
139 dollars or more, no deduction shall be allowed under this  
140 subdivision; and

141 (ii) Where the total modification under subdivisions (1),  
142 (2), (5), (6) and (7) of this subsection is less than eight  
143 thousand dollars per person, the total modification  
144 allowed under this subdivision for all gross income  
145 received by that person shall be limited to the difference  
146 between eight thousand dollars and the sum of subdivi-  
147 sions (1), (2), (5), (6) and (7);

148 (9) Contributions from any source to a medical savings  
149 account established by or for the individual pursuant to  
150 section twenty, article fifteen or section fifteen, article  
151 sixteen, chapter thirty-three of this code, plus interest  
152 earned on the account, to the extent includable in federal  
153 adjusted gross income for federal tax purposes: *Pro-*  
154 *vided*, That the amount subtracted pursuant to this  
155 subdivision for any one taxable year may not exceed two  
156 thousand dollars plus interest earned on the account.  
157 For married individuals filing a joint return, the maxi-  
158 mum deduction is computed separately for each individ-  
159 ual; and

160 (10) Any other income which this state is prohibited  
161 from taxing under the laws of the United States.

162 (d) *Modification for West Virginia fiduciary adjust-*  
163 *ment.* — There shall be added to or subtracted from  
164 federal adjusted gross income, as the case may be, the



165 taxpayer's share, as beneficiary of an estate or trust, of  
166 the West Virginia fiduciary adjustment determined  
167 under section nineteen of this article.

168 (e) *Partners and S corporation shareholders.* — The  
169 amounts of modifications required to be made under this  
170 section by a partner or an S corporation shareholder,  
171 which relate to items of income, gain, loss or deduction  
172 of a partnership or an S corporation, shall be determined  
173 under section seventeen of this article.

174 (f) *Husband and wife.* — If husband and wife determine  
175 their federal income tax on a joint return but determine  
176 their West Virginia income taxes separately, they shall  
177 determine their West Virginia adjusted gross incomes  
178 separately as if their federal adjusted gross incomes had  
179 been determined separately.

180 (g) *Effective date.* — Changes in the language of this  
181 section enacted in the year one thousand nine hundred  
182 ninety-six, shall apply to taxable years beginning after  
183 the thirty-first day of December, one thousand nine  
184 hundred ninety-five.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy Schoonover*

Chairman Senate Committee

*Ludy Seaman*  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parrell Robinson*  
Clerk of the Senate

*Gregory W. Hall*  
Clerk of the House of Delegates

*Carl Key Tomblin*  
President of the Senate

*Earl K. Browner*  
Speaker House of Delegates

The within *is approved* this the *21<sup>st</sup>*  
day of *February*, 1996.

*Garston Caputo*  
Governor

PRESENTED TO THE  
GOVERNOR

Date 2/19/96

Time 10:20 am