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SB786

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2006

**ENROLLED**

SENATE BILL NO. 786

(By Senator Bowman, et al)

PASSED March 11, 2006

In Effect from Passage

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SECRETARY OF STATE

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## Senate Bill No. 786

(BY SENATORS BOWMAN, HELMICK, SHARPE, PREZIOSO,  
PLYMALE, EDGELL, BAILEY AND MCCABE)

[Passed March 11, 2006; in effect from passage.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to calculation of West Virginia adjusted gross income for personal income tax purposes; and subtracting certain severance wages from federal adjusted gross income.

*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.**

- 1 (a) *General.* – The West Virginia adjusted gross income
- 2 of a resident individual means his or her federal adjusted

3 gross income as defined in the laws of the United States  
4 for the taxable year with the modifications specified in  
5 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 than  
11 this state or of a political subdivision of any other state  
12 unless created by compact or agreement to which this state  
13 is a party;

14 (2) Interest or dividend income on obligations or securi-  
15 ties of any authority, commission or instrumentality of the  
16 United States, which the laws of the United States exempt  
17 from federal income tax but not from state income taxes;

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

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

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

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

34 (7) Amounts withdrawn from a medical savings account  
35 established by or for an individual under section twenty,  
36 article fifteen, chapter thirty-three of this code or section

37 fifteen, article sixteen of said chapter that are used for a  
38 purpose other than payment of medical expenses, as  
39 defined in those sections.

40 (c) *Modifications reducing federal adjusted gross income.*  
41 – There shall be subtracted from federal adjusted gross  
42 income to the extent included therein:

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

46 (2) Interest or dividend income on obligations or securi-  
47 ties of any authority, commission or instrumentality of the  
48 United States or of the State of West Virginia to the extent  
49 includable in gross income for federal income tax purposes  
50 but exempt from state income taxes under the laws of the  
51 United States or of the State of West Virginia, including  
52 federal interest or dividends paid to shareholders of a  
53 regulated investment company, under Section 852 of the  
54 Internal Revenue Code for taxable years ending after the  
55 thirtieth day of June, one thousand nine hundred eighty-  
56 seven;

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

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

65 (5) Annuities, retirement allowances, returns of contri-  
66 butions and any other benefit received under the West  
67 Virginia Public Employees Retirement System, the West  
68 Virginia State Teachers Retirement System and all forms  
69 of military retirement, including regular armed forces,  
70 reserves and national guard, including any survivorship  
71 annuities derived therefrom, to the extent includable in

72 gross income for federal income tax purposes: *Provided,*  
73 That notwithstanding any provisions in this code to the  
74 contrary this modification shall be limited to the first two  
75 thousand dollars of benefits received under the West  
76 Virginia Public Employees Retirement System, the West  
77 Virginia State Teachers Retirement System and, including  
78 any survivorship annuities derived therefrom, to the extent  
79 includable in gross income for federal income tax purposes  
80 for taxable years beginning after the thirty-first day of  
81 December, one thousand nine hundred eighty-six; and the  
82 first two thousand dollars of benefits received under any  
83 federal retirement system to which Title 4 U. S. C. §111  
84 applies: *Provided, however,* That the total modification  
85 under this paragraph shall not exceed two thousand  
86 dollars per person receiving retirement benefits and this  
87 limitation shall apply to all returns or amended returns  
88 filed after the last day of December, one thousand nine  
89 hundred eighty-eight;

90 (6) Retirement income received in the form of pensions  
91 and annuities after the thirty-first day of December, one  
92 thousand nine hundred seventy-nine, under any West  
93 Virginia police, West Virginia Firemen's Retirement  
94 System or the West Virginia State Police Death, Disability  
95 and Retirement Fund, the West Virginia State Police  
96 Retirement System or the West Virginia Deputy Sheriff  
97 Retirement System, including any survivorship annuities  
98 derived from any of these programs, to the extent  
99 includable in gross income for federal income tax pur-  
100 poses;

101 (7) (A) For taxable years beginning after the thirty-first  
102 day of December, two thousand, and ending prior to the  
103 first day of January, two thousand three, an amount equal  
104 to two percent multiplied by the number of years of active  
105 duty in the Armed Forces of the United States of America  
106 with the product thereof multiplied by the first thirty  
107 thousand dollars of military retirement income, including  
108 retirement income from the regular armed forces, reserves

109 and national guard paid by the United States or by this  
110 state after the thirty-first day of December, two thousand,  
111 including any survivorship annuities, to the extent in-  
112 cluded in gross income for federal income tax purposes for  
113 the taxable year.

114 (B) For taxable years beginning after the thirty-first day  
115 of December, two thousand two, the first twenty thousand  
116 dollars of military retirement income, including retirement  
117 income from the regular armed forces, reserves and  
118 national guard paid by the United States or by this state  
119 after the thirty-first day of December, two thousand two,  
120 including any survivorship annuities, to the extent in-  
121 cluded in gross income for federal income tax purposes for  
122 the taxable year.

123 (C) In the event that any of the provisions of this subdivi-  
124 sion are found by a court of competent jurisdiction to  
125 violate either the Constitution of this state or of the United  
126 States, or is held to be extended to persons other than  
127 specified in this subdivision, this subdivision shall become  
128 null and void by operation of law.

129 (8) Federal adjusted gross income in the amount of eight  
130 thousand dollars received from any source after the thirty-  
131 first day of December, one thousand nine hundred eighty-  
132 six, by any person who has attained the age of sixty-five  
133 on or before the last day of the taxable year, or by any  
134 person certified by proper authority as permanently and  
135 totally disabled, regardless of age, on or before the last day  
136 of the taxable year, to the extent includable in federal  
137 adjusted gross income for federal tax purposes: *Provided*,  
138 That if a person has a medical certification from a prior  
139 year and he or she is still permanently and totally dis-  
140 abled, a copy of the original certificate is acceptable as  
141 proof of disability. A copy of the form filed for the federal  
142 disability income tax exclusion is acceptable: *Provided*,  
143 *however*, That:

144 (i) Where the total modification under subdivisions (1),  
145 (2), (5), (6) and (7) of this subsection is eight thousand  
146 dollars per person or more, no deduction shall be allowed  
147 under this subdivision; and

148 (ii) Where the total modification under subdivisions (1),  
149 (2), (5), (6) and (7) of this subsection is less than eight  
150 thousand dollars per person, the total modification  
151 allowed under this subdivision for all gross income  
152 received by that person shall be limited to the difference  
153 between eight thousand dollars and the sum of modifica-  
154 tions under subdivisions (1), (2), (5), (6) and (7) of this  
155 subsection;

156 (9) Federal adjusted gross income in the amount of eight  
157 thousand dollars received from any source after the thirty-  
158 first day of December, one thousand nine hundred eighty-  
159 six, by the surviving spouse of any person who had at-  
160 tained the age of sixty-five or who had been certified as  
161 permanently and totally disabled, to the extent includable  
162 in federal adjusted gross income for federal tax purposes:  
163 *Provided, That:*

164 (i) Where the total modification under subdivisions (1),  
165 (2), (5), (6), (7) and (8) of this subsection is eight thousand  
166 dollars or more, no deduction shall be allowed under this  
167 subdivision; and

168 (ii) Where the total modification under subdivisions (1),  
169 (2), (5), (6), (7) and (8) of this subsection is less than eight  
170 thousand dollars per person, the total modification  
171 allowed under this subdivision for all gross income  
172 received by that person shall be limited to the difference  
173 between eight thousand dollars and the sum of subdivi-  
174 sions (1), (2), (5), (6), (7) and (8) of this subsection;

175 (10) Contributions from any source to a medical savings  
176 account established by or for the individual pursuant to  
177 section twenty, article fifteen, chapter thirty-three of this  
178 code or section fifteen, article sixteen of said chapter, plus

179 interest earned on the account, to the extent includable in  
180 federal adjusted gross income for federal tax purposes:  
181 *Provided*, That the amount subtracted pursuant to this  
182 subdivision for any one taxable year may not exceed two  
183 thousand dollars plus interest earned on the account. For  
184 married individuals filing a joint return, the maximum  
185 deduction is computed separately for each individual;

186 (11) For the two thousand six taxable year only, sever-  
187 ance wages received by a taxpayer from an employer as  
188 the result of the taxpayer's permanent termination from  
189 employment through a reduction in force and through no  
190 fault of the employee, not to exceed thirty thousand  
191 dollars. For purposes of this subdivision:

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

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

200 (iii) The term "controlled group" means one or more  
201 chains of corporations connected through stock ownership  
202 with a common parent corporation if stock possessing at  
203 least fifty percent of the voting power of all classes of  
204 stock of each of the corporations is owned directly or  
205 indirectly by one or more of the corporations and the  
206 common parent owns directly stock possessing at least  
207 fifty percent of the voting power of all classes of stock of  
208 at least one of the other corporations;

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



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

216 (d) *Modification for West Virginia fiduciary adjustment.*  
217 – There shall be added to or subtracted from federal  
218 adjusted gross income, as the case may be, the taxpayer's  
219 share, as beneficiary of an estate or trust, of the West  
220 Virginia fiduciary adjustment determined under section  
221 nineteen of this article.

222 (e) *Partners and S corporation shareholders.* – The  
223 amounts of modifications required to be made under this  
224 section by a partner or an S corporation shareholder,  
225 which relate to items of income, gain, loss or deduction of  
226 a partnership or an S corporation, shall be determined  
227 under section seventeen of this article.

228 (f) *Husband and wife.* – If husband and wife determine  
229 their federal income tax on a joint return but determine  
230 their West Virginia income taxes separately, they shall  
231 determine their West Virginia adjusted gross incomes  
232 separately as if their federal adjusted gross incomes had  
233 been determined separately.

234 (g) *Effective date.* – (1) Changes in the language of this  
235 section enacted in the year two thousand shall apply to  
236 taxable years beginning after the thirty-first day of  
237 December, two thousand.

238 (2) Changes in the language of this section enacted in the  
239 year two thousand two shall apply to taxable years  
240 beginning after the thirty-first day of December, two  
241 thousand two.

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

*Henry White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved..... this the *29th*  
Day of *March*....., 2006.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2006

Time 9:50am