

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 233**

4 (By Senators McCabe, Browning, Foster, Unger, Edgell, Wells,  
5 Stollings, Nohe, Klempa, Wills, Miller and Kessler (Acting  
6 President))

7  
8 [Originating in the Committee on Education;  
9 reported February 23, 2011.]  
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12  
13 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
14 1931, as amended, relating to establishing a modification  
15 reducing federal adjusted gross income for recent graduates of  
16 higher education institutions; and providing for the  
17 promulgation of rules by the Tax Commissioner for such  
18 purpose.

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

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

22 **ARTICLE 21. PERSONAL INCOME TAX.**

23 PART I. GENERAL.

24 **§11-21-12. West Virginia adjusted gross income of resident**  
25 **individual.**

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

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

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

11       (2) Interest or dividend income on obligations or securities  
12 of any authority, commission or instrumentality of the United  
13 States, which the laws of the United States exempt from federal  
14 income tax but not from state income taxes;

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

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

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

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

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

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

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

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

25       (3) Any amount included in federal adjusted gross income for  
26 federal income tax purposes for the taxable year that is not

1 included in federal adjusted gross income under this article for  
2 the taxable year;

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

7       (5) Annuities, retirement allowances, returns of contributions  
8 and any other benefit received under the West Virginia Public  
9 Employees Retirement System, the West Virginia State Teachers  
10 Retirement System and all forms of military retirement, including  
11 regular Armed Forces, reserves and National Guard, including any  
12 survivorship annuities derived therefrom, to the extent includable  
13 in gross income for federal income tax purposes: *Provided, That*  
14 notwithstanding any provisions in this code to the contrary this  
15 modification shall be limited to the first \$2,000 of benefits  
16 received under the West Virginia Public Employees Retirement  
17 System, the West Virginia State Teachers Retirement System and,  
18 including any survivorship annuities derived therefrom, to the  
19 extent includable in gross income for federal income tax purposes  
20 for taxable years beginning after December 31, 1986 and the first  
21 \$2,000 of benefits received under any federal retirement system to  
22 which Title 4 U.S.C. §111 applies: *Provided, however, That* the  
23 total modification under this paragraph shall not exceed \$2,000 per  
24 person receiving retirement benefits and this limitation shall  
25 apply to all returns or amended returns filed after December 31,  
26 1986;

1       (6) Retirement income received in the form of pensions and  
2 annuities after December 31, 1979, under any West Virginia police,  
3 West Virginia Firemen's Retirement System or the West Virginia  
4 State Police Death, Disability and Retirement Fund, the West  
5 Virginia State Police Retirement System or the West Virginia Deputy  
6 Sheriff Retirement System, including any survivorship annuities  
7 derived from any of these programs, to the extent includable in  
8 gross income for federal income tax purposes;

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

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

25       (C) In the event that any of the provisions of this  
26 subdivision are found by a court of competent jurisdiction to

1 violate either the Constitution of this state or of the United  
2 States, or is held to be extended to persons other than specified  
3 in this subdivision, this subdivision shall become null and void by  
4 operation of law.

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

17       (i) Where the total modification under subdivisions (1), (2),  
18 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
19 no deduction shall be allowed under this subdivision; and

20       (ii) Where the total modification under subdivisions (1), (2),  
21 (5), (6) and (7) of this subsection is less than \$8,000 per person,  
22 the total modification allowed under this subdivision for all gross  
23 income received by that person shall be limited to the difference  
24 between \$8,000 and the sum of modifications under subdivisions (1),  
25 (2), (5), (6) and (7) of this subsection;

26       (9) Federal adjusted gross income in the amount of \$8,000

1 received from any source after December 31, 1986, by the surviving  
2 spouse of any person who had attained the age of sixty-five or who  
3 had been certified as permanently and totally disabled, to the  
4 extent includable in federal adjusted gross income for federal tax  
5 purposes: *Provided, That:*

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

9 (ii) Where the total modification under subdivisions (1), (2),  
10 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
11 person, the total modification allowed under this subdivision for  
12 all gross income received by that person shall be limited to the  
13 difference between \$8,000 and the sum of subdivisions (1), (2),  
14 (5), (6), (7) and (8) of this subsection;

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

25 (11) For the 2006 taxable year only, severance wages received  
26 by a taxpayer from an employer as the result of the taxpayer's

1 permanent termination from employment through a reduction in force  
2 and through no fault of the employee, not to exceed \$30,000. For  
3 purposes of this subdivision:

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

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

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

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

25 (12) Any other income which this state is prohibited from  
26 taxing under the laws of the United States; and



1       (13) Federal adjusted gross income in the amount of \$25,000  
2 received from any source after December 31, 2011, by a taxpayer who  
3 has graduated from any regionally accredited post secondary  
4 institution in the United States or any accredited post secondary  
5 institution within the State of West Virginia with a two-year,  
6 four-year, or advanced degree in a tax year which is not more than  
7 two years prior to the year which the taxpayer is filing:  
8 Provided, That, no taxpayer is eligible to claim such a  
9 modification for more than any two tax years: Provided, however,  
10 That the State Tax Commissioner shall promulgate legislative rules  
11 pursuant to the provisions of chapter twenty-nine-a of this code  
12 regarding the documentation necessary to claim such a modification:  
13 Provided, further, That no person may claim such a modification  
14 after December 31 2019.

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

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

25       (f) *Husband and wife.* -- If husband and wife determine their  
26 federal income tax on a joint return but determine their West

1 Virginia income taxes separately, they shall determine their West  
2 Virginia adjusted gross incomes separately as if their federal  
3 adjusted gross incomes had been determined separately.

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

7       (2) Changes in the language of this section enacted in the  
8 year 2002 shall apply to taxable years beginning after December 31,  
9 2002.