

1                                   **Senate Bill No. 520**

2    (By Senators Browning, Kessler (Mr. President), Unger, Klempa,  
3                                   Palumbo and Kirkendoll)

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5    [Introduced February 6, 2012; referred to the Committee on  
6                                   Education; and then to the Committee on Finance.]

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11 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
12       1931, as amended, relating to establishing a modification  
13       reducing federal adjusted gross income for recent graduates of  
14       higher education institutions; providing for the promulgation  
15       of rules by the Tax Commissioner for such purpose; and  
16       requiring the Tax Commissioner to report to the Joint  
17       Committee on Government and Finance as to the effectiveness of  
18       the modification.

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.

1 **§11-21-12. West Virginia adjusted gross income of resident**  
2 **individual.**

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

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

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

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

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

21 (4) Interest on indebtedness incurred or continued to purchase  
22 or carry obligations or securities the income from which is exempt  
23 from tax under this article, to the extent deductible in

1 determining federal adjusted gross income;

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

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

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

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

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

21       (2) Interest or dividend income on obligations or securities  
22 of any authority, commission or instrumentality of the United  
23 States or of the State of West Virginia to the extent includable in

1 gross income for federal income tax purposes but exempt from state  
2 income taxes under the laws of the United States or of the State of  
3 West Virginia, including federal interest or dividends paid to  
4 shareholders of a regulated investment company, under Section 852  
5 of the Internal Revenue Code for taxable years ending after June  
6 30, 1987;

7       (3) Any amount included in federal adjusted gross income for  
8 federal income tax purposes for the taxable year that is not  
9 included in federal adjusted gross income under this article for  
10 the taxable year;

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

15       (5) Annuities, retirement allowances, returns of contributions  
16 and any other benefit received under the West Virginia Public  
17 Employees Retirement System, the West Virginia State Teachers  
18 Retirement System and all forms of military retirement, including  
19 regular Armed Forces, reserves and National Guard, including any  
20 survivorship annuities derived therefrom, to the extent includable  
21 in gross income for federal income tax purposes: *Provided*, That  
22 notwithstanding any provisions in this code to the contrary this  
23 modification shall be limited to the first \$2,000 of benefits

1 received under the West Virginia Public Employees Retirement  
2 System, the West Virginia State Teachers Retirement System and,  
3 including any survivorship annuities derived therefrom, to the  
4 extent includable in gross income for federal income tax purposes  
5 for taxable years beginning after December 31, 1986; and the first  
6 \$2,000 of benefits received under any federal retirement system to  
7 which Title 4 U.S.C. §111 applies: *Provided, however,* That the  
8 total modification under this paragraph shall not exceed \$2,000 per  
9 person receiving retirement benefits and this limitation shall  
10 apply to all returns or amended returns filed after December 31,  
11 1988;

12 (6) Retirement income received in the form of pensions and  
13 annuities after December 31, 1979, under any West Virginia police,  
14 West Virginia Firemen's Retirement System or the West Virginia  
15 State Police Death, Disability and Retirement Fund, the West  
16 Virginia State Police Retirement System or the West Virginia Deputy  
17 Sheriff Retirement System, including any survivorship annuities  
18 derived from any of these programs, to the extent includable in  
19 gross income for federal income tax purposes;

20 (7) (A) For taxable years beginning after December 31, 2000,  
21 and ending prior to January 1, 2003, an amount equal to two percent  
22 multiplied by the number of years of active duty in the Armed  
23 Forces of the United States of America with the product thereof

1 multiplied by the first \$30,000 of military retirement income,  
2 including retirement income from the regular Armed Forces, reserves  
3 and National Guard paid by the United States or by this state after  
4 December 31, 2000, including any survivorship annuities, to the  
5 extent included in gross income for federal income tax purposes for  
6 the taxable year.

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

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

19 (8) Federal adjusted gross income in the amount of \$8,000  
20 received from any source after December 31, 1986, by any person who  
21 has attained the age of sixty-five on or before the last day of the  
22 taxable year, or by any person certified by proper authority as  
23 permanently and totally disabled, regardless of age, on or before

1 the last day of the taxable year, to the extent includable in  
2 federal adjusted gross income for federal tax purposes: *Provided,*  
3 That if a person has a medical certification from a prior year and  
4 he or she is still permanently and totally disabled, a copy of the  
5 original certificate is acceptable as proof of disability. A copy  
6 of the form filed for the federal disability income tax exclusion  
7 is acceptable: *Provided, however, That:*

8 (i) Where the total modification under subdivisions (1), (2),  
9 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
10 no deduction shall be allowed under this subdivision; and

11 (ii) Where the total modification under subdivisions (1), (2),  
12 (5), (6) and (7) of this subsection is less than \$8,000 per person,  
13 the total modification allowed under this subdivision for all gross  
14 income received by that person shall be limited to the difference  
15 between \$8,000 and the sum of modifications under subdivisions (1),  
16 (2), (5), (6) and (7) of this subsection;

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

23 (i) Where the total modification under subdivisions (1), (2),

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

3 (ii) Where the total modification under subdivisions (1), (2),  
4 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
5 person, the total modification allowed under this subdivision for  
6 all gross income received by that person shall be limited to the  
7 difference between \$8,000 and the sum of subdivisions (1), (2),  
8 (5), (6), (7) and (8) of this subsection;

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

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



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

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

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

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

21 and

22 (12) Any other income which this state is prohibited from  
23 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, 2012, taxpayer who has  
3 graduated from any regionally accredited post-secondary institution  
4 in the United States or any accredited post-secondary institution  
5 within the State of West Virginia with a two-year, four-year or  
6 advanced degree in a tax year which is not more than two years  
7 prior to the year which the taxpayer is filing: *Provided, That, no*  
8 taxpayer is eligible to claim the modification for more than any  
9 two tax years: *Provided, however, That the State Tax Commissioner*  
10 shall promulgate legislative rules pursuant to the provisions of  
11 chapter twenty-nine-a of this code regarding the documentation  
12 necessary to claim the modification: *Provided, further, That no*  
13 person may claim the modification after December 31, 2019: *And*  
14 *Provided, further,* On or before June 1, 2014 and each year  
15 thereafter, the Tax Commissioner shall submit to the Joint  
16 Committee of Government and Finance all information regarding the  
17 use of the modification in the preceding years. The Joint  
18 Committee of Government and Finance shall review the information  
19 and any other information deemed relevant by the Joint Committee of  
20 Government and Finance on or before July 1, 2014 and each year  
21 thereafter, to determine the effectiveness of the modification.

22       (d) *Modification for West Virginia fiduciary adjustment.* --  
23 There shall be added to or subtracted from federal adjusted gross

1 income, as the case may be, the taxpayer's share, as beneficiary of  
2 an estate or trust, of the West Virginia fiduciary adjustment  
3 determined under section nineteen of this article.

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

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

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

17 (2) Changes in the language of this section enacted in the  
18 year 2002 shall apply to taxable years beginning after December 31,  
19 2002.

NOTE: The purpose of this bill is to establish incentives to attract and retain young talent to the State of West Virginia. The bill establishes a modification reducing federal adjusted gross income for recent graduates of higher education institutions. The

bill requires the Joint Committee on Government and Finance to review the effectiveness of the modification. The bill also provides for rule-making authority.

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