

H. B. 3078

(By Delegates Shott, Ellington, E. Nelson, Gearheart,
Lane, Canterbury, J. Nelson and Armstead)

[Introduced March 25, 2013; referred to the
Committee on Senior Citizen Issues then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
1931, as amended, relating to raising the maximum personal
income tax exemption for persons over the age of sixty-five
and for persons who are totally disabled, for the next three
years.

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.

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

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

(b) *Modifications increasing federal adjusted gross income.* --

1 There shall be added to federal adjusted gross income unless
2 already included therein the following items:

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

6 (2) Interest or dividend income on obligations or securities
7 of any authority, commission or instrumentality of the United
8 States, which the laws of the United States exempt from federal
9 income tax but not from state income taxes;

10 (3) Any deduction allowed when determining federal adjusted
11 gross income for federal income tax purposes for the taxable year
12 that is not allowed as a deduction under this article for the
13 taxable year;

14 (4) Interest on indebtedness incurred or continued to purchase
15 or carry obligations or securities the income from which is exempt
16 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
19 certificate which is allowed as an exclusion from federal gross
20 income under Section 128 of the Internal Revenue Code, for the
21 federal taxable year;

22 (6) The amount of a lump sum distribution for which the
23 taxpayer has elected under Section 402(e) of the Internal Revenue
24 Code of 1986, as amended, to be separately taxed for federal income

1 tax purposes; and

2 (7) Amounts withdrawn from a medical savings account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

7 (c) *Modifications reducing federal adjusted gross income.* --
8 There shall be subtracted from federal adjusted gross income to the
9 extent included therein:

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

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

22 (3) Any amount included in federal adjusted gross income for
23 federal income tax purposes for the taxable year that is not
24 included in federal adjusted gross income under this article for

1 the taxable year;

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

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

1 1988;

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

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

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

1 gross income for federal income tax purposes for the taxable year.

2 (C) In the event that any of the provisions of this
3 subdivision are found by a court of competent jurisdiction to
4 violate either the Constitution of this state or of the United
5 States, or is held to be extended to persons other than specified
6 in this subdivision, this subdivision shall become null and void by
7 operation of law.

8 (8) Federal adjusted gross income in the amount of ~~\$8,000~~
9 \$20,000 received from any source after ~~December 31, 1986~~ December
10 31, 2012, by any person who has attained the age of sixty-five on
11 or before the last day of the taxable year, or by any person
12 certified by proper authority as permanently and totally disabled,
13 regardless of age, on or before the last day of the taxable year,
14 to the extent includable in federal adjusted gross income for
15 federal tax purposes: *Provided,* That if a person has a medical
16 certification from a prior year and he or she is still permanently
17 and totally disabled, a copy of the original certificate is
18 acceptable as proof of disability. A copy of the form filed for
19 the federal disability income tax exclusion is acceptable:
20 *Provided, however,* That:

21 (i) Where the total modification under subdivisions (1), (2),
22 (5), (6) and (7) of this subsection is ~~\$8,000~~ \$20,000 per person or
23 more, no deduction ~~shall be~~ is allowed under this subdivision; ~~and~~

24 (ii) Where the total modification under subdivisions (1), (2),

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

7 (iii) Modifications of federal adjusted gross income under
 8 subdivision (8) of this subsection shall increase by \$4,000 each
 9 calendar year for three consecutive years, beginning with calendar
 10 year 2013, from \$8,000, until reaching the maximum exemption of
 11 \$20,000.

12 (9) Federal adjusted gross income in the amount of ~~\$8,000~~
 13 \$20,000 received from any source after ~~December 31, 1986~~ December
 14 1, 2012, by the surviving spouse of any person who had attained the
 15 age of sixty-five or who had been certified as permanently and
 16 totally disabled, to the extent includable in federal adjusted
 17 gross income for federal tax purposes: *Provided, That:*

18 (i) Where the total modification under subdivisions (1), (2),
 19 (5), (6), (7) and (8) of this subsection is ~~\$8,000~~ \$20,000 or more,
 20 no deduction ~~shall be~~ is allowed under this subdivision; ~~and~~

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

1 is limited to the difference between ~~\$8,000~~ \$20,000 and the sum of
2 subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;
3 and

4 (iii) Modifications of federal adjusted gross income under
5 subdivision (9) of this subsection shall increase by \$4,000 each
6 calendar year for three consecutive years, beginning with calendar
7 year 2013, from \$8,000, until reaching the maximum exemption of
8 \$20,000.

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:

24 (i) The term "severance wages" means any monetary compensation

1 paid by the employer in the taxable year as a result of permanent
2 termination from employment in excess of regular annual wages or
3 regular annual salary;

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

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

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

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

23 (d) *Modification for West Virginia fiduciary adjustment.* --
24 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.

20 (3) Changes in the language of this section enacted in the
21 year 2013 shall apply to taxable years beginning after December 31,
22 2012.

NOTE: The purpose of this bill is to raise the maximum

personal income tax exemption for persons over the age of sixty-five and for persons who are totally disabled, for the next three years.

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