

**Senate Bill No. 512**

(By Senator Yost)

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[Introduced March 13, 2013; referred to the Committee on  
Finance.]  
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**FISCAL  
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to the reduction of state income taxes for certain state and federal retirees by increasing the exemption on retirement income in calculating the federal gross income for state personal income tax purposes.

*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.**

(a) *General.* -- The West Virginia adjusted gross income of a

1 resident individual means his or her federal adjusted gross income  
2 as defined in the laws of the United States for the taxable year  
3 with the modifications specified in this section.

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

7 (1) Interest income on obligations of any state other than  
8 this state or of a political subdivision of any other state unless  
9 created by compact or agreement ~~to which~~ with this state; ~~is a~~  
10 ~~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~~ Deductions allowed when determining federal  
16 adjusted gross income for federal income tax purposes for the  
17 taxable year that is not allowed as a deduction under this article  
18 for the 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

1 certificate ~~which is~~ allowed as an exclusion from federal gross  
2 income under Section 128 of the Internal Revenue Code for the  
3 federal taxable year;

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

8 (7) Amounts withdrawn from a medical savings account  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

14 (c) *Modifications reducing federal adjusted gross income.* --  
15 ~~There shall be~~ The following items are subtracted from federal  
16 adjusted gross income: ~~to the extent included therein~~

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

20 (2) Interest or dividend income on obligations or securities  
21 of any authority, commission or instrumentality of the United  
22 States or of the State of West Virginia to the extent includable in  
23 gross income for federal income tax purposes but exempt from state

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

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

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

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

1 Employees Retirement System, the West Virginia State Teachers'  
2 Retirement System, ~~and,~~ including any survivorship annuities,  
3 ~~derived therefrom~~ to the extent includable in gross income for  
4 federal income tax purposes for taxable years beginning after  
5 December 31, ~~one thousand nine hundred eighty-six~~ 2013 and the  
6 first ~~two thousand dollars~~ \$20,000 of benefits received under any  
7 federal retirement system to which Title 4 U.S.C. §111 applies.  
8 ~~Provided, however, That~~ However, the total modification under this  
9 ~~paragraph shall~~ subdivision may not exceed ~~two thousand dollars~~  
10 \$20,000 per person receiving retirement benefits and this  
11 limitation ~~shall~~ applies to all returns or amended returns filed  
12 for taxable years beginning after December 31, ~~one thousand nine~~  
13 ~~hundred eighty-eight~~ 2013;

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

22 (7) (A) For taxable years beginning after December 31, 2000,  
23 and ending prior to January 1, 2003, an amount equal to two percent

1 multiplied by the number of years of active duty in the Armed  
2 Forces of the United States of America, ~~with the product thereof~~  
3 multiplied by the first \$30,000 of military retirement income,  
4 including retirement income from the regular Armed Forces, Reserves  
5 and National Guard paid by the United States or by this state after  
6 December 31, 2000, including any survivorship annuities, to the  
7 extent included in gross income for federal income tax purposes for  
8 the taxable year. For taxable years ending after December 31,  
9 2013, persons claiming a modification for military retirement  
10 pursuant to subdivision (5), subsection (c) of this section and  
11 modification under this subdivision may receive a combined  
12 modification of \$22,000 total under the two subdivisions.

13 (B) For taxable years beginning after December 31, 2002, the  
14 first \$20,000 of military retirement income, including retirement  
15 income from the regular Armed Forces, Reserves and National Guard  
16 paid by the United States or by this state after December 31, 2002,  
17 including any survivorship annuities, to the extent included in  
18 gross income for federal income tax purposes for the taxable year.

19 (C) ~~In the event that~~ If ~~any of the provisions~~ provision of  
20 this subdivision ~~are~~ is found by a court of competent jurisdiction  
21 to violate ~~either~~ the Constitution of this state or of the United  
22 States or is ~~held to be~~ extended to persons other than specified in  
23 this subdivision, this subdivision ~~shall become~~ becomes null and

1 void. ~~by operation of law~~

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

14 (i) Where the total modification under subdivisions (1), (2),  
 15 ~~(5)~~, (6) and (7) of this subsection is \$8,000 per person or more,  
 16 no deduction ~~shall be~~ is allowed under this subdivision; and

17 (ii) Where the total modification under subdivisions (1), (2),  
 18 ~~(5)~~, (6) and (7) of this subsection is less than \$8,000 per person,  
 19 the total modification allowed under this subdivision for all gross  
 20 income received by that person ~~shall be~~ is limited to the  
 21 difference between \$8,000 and the sum of modifications under  
 22 subdivisions (1), (2), ~~(5)~~, (6) and (7) of this subsection;

23 (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~~ However:

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~~ is 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~~ is 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 sections fifteen and twenty, article fifteen, chapter thirty-three  
 18 of this code ~~or section fifteen, article sixteen, of said chapter,~~  
 19 plus interest earned on the account, to the extent includable in  
 20 federal adjusted gross income for federal tax purposes. ~~Provided,~~  
 21 ~~That~~ However, the amount subtracted pursuant to this subdivision  
 22 for any one taxable year may not exceed \$2,000 plus interest earned  
 23 on the account. For married individuals filing a joint return, the



1 maximum deduction is computed separately for each individual;

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

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

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

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

23       (iv) The term "corporation" means any corporation, joint-stock

1 company or association and any business conducted by a trustee or  
 2 trustees wherein interest or ownership is evidenced by a  
 3 certificate of interest or ownership or similar written instrument;  
 4 and

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

7 (d) *Modification for West Virginia fiduciary adjustment.* --  
 8 ~~There shall be added to or subtracted from federal adjusted gross~~  
 9 ~~income, as the case may be, the~~ A taxpayer's share, as beneficiary  
 10 of an estate or trust, of the West Virginia fiduciary adjustment  
 11 determined under section nineteen of this article is added to or  
 12 subtracted from federal adjusted gross income, as the case may be.

13 (e) *Partners and S corporation shareholders.* -- The amounts of  
 14 modifications required to be made under this section by a partner  
 15 or an S corporation shareholder, ~~which relate~~ relating to items of  
 16 income, gain, loss or deduction of a partnership or an S  
 17 corporation, ~~shall be~~ is determined under section seventeen of this  
 18 article.

19 (f) *Husband and wife.* -- If husband and wife determine their  
 20 federal income tax on a joint return but determine their West  
 21 Virginia income taxes separately, they shall determine their West  
 22 Virginia adjusted gross incomes separately as if their federal  
 23 adjusted gross incomes had been determined separately.

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

4       (2) Changes in the language of this section enacted in the  
5 year 2002 ~~shall apply~~ applies to taxable years beginning after  
6 December 31, 2002.

7       (3) Changes in the language of this section enacted in the  
8 year 2013 apply to taxable years beginning after December 31, 2013.

NOTE: The purpose of this bill is to reduce state income taxes for state and federal retirees by increasing the exemption on retirement income in calculating the federal gross income for state personal income tax purposes.

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