

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2193

FISCAL  
NOTE

By Delegates Burkhammer, Steele, Holstein and  
Hillenbrand

[Introduced January 11, 2023; Referred to the  
Committee on Finance]

1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating  
 2 to personal income tax; removing certain deductions for modification of social security  
 3 income in adjusted gross income.

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

**ARTICLE                    21.                    PERSONAL                    INCOME                    TAX.**

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

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

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

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

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

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

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

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

24 (7) Amounts withdrawn from a medical savings account established by or for an individual  
25 under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of  
26 medical expenses, as defined in those sections.

27 (c) *Modifications reducing federal adjusted gross income.* — There shall be subtracted  
28 from federal adjusted gross income to the extent included therein:

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

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

37 (3) Any amount included in federal adjusted gross income for federal income tax purposes  
38 for the taxable year that is not included in federal adjusted gross income under this article for the  
39 taxable year;

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

43 (5) Annuities, retirement allowances, returns of contributions and any other benefit  
44 received under the West Virginia Public Employees Retirement System, and the West Virginia  
45 State Teachers Retirement System, including any survivorship annuities derived therefrom, to the  
46 extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding

47 any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of  
48 benefits received under the West Virginia Public Employees Retirement System, the West Virginia  
49 State Teachers Retirement System and, including any survivorship annuities derived therefrom, to  
50 the extent includable in gross income for federal income tax purposes for taxable years beginning  
51 after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement  
52 system to which Title 4 U.S.C. §111 applies: *Provided, however,* That the total modification under  
53 this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation  
54 shall apply to all returns or amended returns filed after December 31, 1988;

55 (6) Retirement income received in the form of pensions and annuities after December 31,  
56 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West  
57 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police  
58 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any  
59 survivorship annuities derived from any of these programs, to the extent includable in gross  
60 income for federal income tax purposes;

61 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January  
62 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the  
63 Armed Forces of the United States of America with the product thereof multiplied by the first  
64 \$30,000 of military retirement income, including retirement income from the regular Armed Forces,  
65 Reserves and National Guard paid by the United States or by this state after December 31, 2000,  
66 including any survivorship annuities, to the extent included in gross income for federal income tax  
67 purposes for the taxable year.

68 (B) For taxable years beginning after December 31, 2000, the first \$20,000 of military  
69 retirement income, including retirement income from the regular Armed Forces, Reserves and  
70 National Guard paid by the United States or by this state after December 31, 2002, including any  
71 survivorship annuities, to the extent included in gross income for federal income tax purposes for  
72 the taxable year.

73 (C) For taxable years beginning after December 31, 2017, military retirement income,  
74 including retirement income from the regular Armed Forces, Reserves and National Guard paid by  
75 the United States or by this state after December 31, 2017, including any survivorship annuities, to  
76 the extent included in federal adjusted gross income for the taxable year. For taxable years  
77 beginning after December 31, 2018, retirement income from the uniformed services, including the  
78 Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic  
79 Atmospheric Administration, reserves, and National Guard, paid by the United States or by this  
80 state after December 31, 2018, including any survivorship annuities, to the extent included in  
81 federal adjusted gross income for the taxable year.

82 (D) In the event that any of the provisions of this subdivision are found by a court of  
83 competent jurisdiction to violate either the Constitution of this state or of the United States, or is  
84 held to be extended to persons other than specified in this subdivision, this subdivision shall  
85 become null and void by operation of law.

86 (8) Decreasing modification for social security income.

87 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of  
88 social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited  
89 to, social security benefits paid by the Social Security Administration as Old Age, Survivors and  
90 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security  
91 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
92 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification  
93 from federal adjusted gross income when determining West Virginia taxable income subject to the  
94 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

95 (B) For taxable years beginning on or after January 1, 2021, 65 percent of the social  
96 security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,  
97 social security benefits paid by the Social Security Administration as Old Age, Survivors and  
98 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security

99 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
100 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification  
101 from federal adjusted gross income when determining West Virginia taxable income subject to the  
102 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

103 (C) For taxable years beginning on or after January 1, 2022, 100 percent of the social  
104 security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,  
105 social security benefits paid by the Social Security Administration as Old Age, Survivors and  
106 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security  
107 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
108 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification  
109 from federal adjusted gross income when determining West Virginia taxable income subject to the  
110 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

111 ~~(D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-~~  
112 ~~12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married~~  
113 ~~couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual~~  
114 ~~or a married individual filing a separate return~~

115 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after  
116 December 31, 1986, by any person who has attained the age of 65 on or before the last day of the  
117 taxable year, or by any person certified by proper authority as permanently and totally disabled,  
118 regardless of age, on or before the last day of the taxable year, to the extent includable in federal  
119 adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical  
120 certification from a prior year and he or she is still permanently and totally disabled, a copy of the  
121 original certificate is acceptable as proof of disability. A copy of the form filed for the federal  
122 disability income tax exclusion is acceptable: *Provided, however*, That:

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

125 and

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

130 (10) Federal adjusted gross income in the amount of \$8,000 received from any source after  
131 December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who  
132 had been certified as permanently and totally disabled, to the extent includable in federal adjusted  
133 gross income for federal tax purposes: *Provided*, That:

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

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

140 (11) Contributions from any source to a medical savings account established by or for the  
141 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to  
142 the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the  
143 amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000  
144 plus interest earned on the account. For married individuals filing a joint return, the maximum  
145 deduction is computed separately for each individual; and

146 (12) Any other income which this state is prohibited from taxing under the laws of the  
147 United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of  
148 the Internal Revenue Code.

149 (d) *Modification for West Virginia fiduciary adjustment.* — There shall be added to or  
150 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as

151 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-  
152 21-19 of this code.

153 (e) *Partners and S corporation shareholders.* — The amounts of modifications required to  
154 be made under this section by a partner or an S corporation shareholder, which relate to items of  
155 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under  
156 §11-21-17 of this code.

157 (f) *Husband and wife.* — If husband and wife determine their federal income tax on a joint  
158 return but determine their West Virginia income taxes separately, they shall determine their West  
159 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been  
160 determined separately.

161 (g) *Effective date.* —

162 (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable  
163 years beginning after December 31, 2000.

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

166 (3) Changes in the language of this section enacted in the year 2019 shall apply to taxable  
167 years beginning after December 31, 2018.

168 (4) Changes in the language of this section enacted in the year 2023 shall apply to taxable  
169 years beginning after December 31, 2022.

NOTE: The purpose of this bill is to remove limitations on certain deductions for  
modification of social security income in adjusted gross income.

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