

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2311

By Delegate Keaton

[Introduced January 11, 2023; Referred to the
Committee on Pensions and Retirement then
Finance]

1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating
 2 to allowing a surviving spouse one additional tax exemption of \$20,000 beginning after
 3 December 31, 2023, for two taxable years after the death of the spouse; and defining
 4 surviving spouse.

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24 (7) Amounts withdrawn from a medical savings account established by or for an individual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: *Provided, further, That*
55 for taxable years beginning after December 31, 2023, a surviving spouse shall be allowed one
56 additional exemption of \$20,000 for the two taxable years beginning after the year of death of the
57 deceased spouse. For purposes of this section a surviving spouse means a taxpayer whose
58 spouse died during the taxable year prior to the taxable year for which the annual return is being
59 filed and who has not remarried at any time before the end of the taxable year for which the annual
60 return is being filed.

61 (6) Retirement income received in the form of pensions and annuities after December 31,
62 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West
63 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
64 Retirement System, or the West Virginia Deputy Sheriff Retirement System, including any
65 survivorship annuities derived from any of these programs, to the extent includable in gross
66 income for federal income tax purposes;

67 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January
68 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the
69 Armed Forces of the United States of America with the product thereof multiplied by the first
70 \$30,000 of military retirement income, including retirement income from the regular Armed Forces,
71 Reserves and National Guard paid by the United States or by this state after December 31, 2000,

72 including any survivorship annuities, to the extent included in gross income for federal income tax
73 purposes for the taxable year.

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

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

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

92 (8) Decreasing modification for Social Security income.

93 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of
94 Social Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited
95 to, Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
96 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et seq.* or as Supplemental Security
97 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et seq.*, included in

98 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
99 from federal adjusted gross income when determining West Virginia taxable income subject to the
100 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

101 (B) For taxable years beginning on or after January 1, 2021, 65 percent of the Social
102 Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,
103 Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
104 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
105 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in
106 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
107 from federal adjusted gross income when determining West Virginia taxable income subject to the
108 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

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

117 (D) The ~~deduction~~ deductions allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-
118 21-12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married
119 couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual
120 or a married individual filing a separate return.

121 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after
122 December 31, 1986, by any person who has attained the age of 65 on or before the last day of the
123 taxable year, or by any person certified by proper authority as permanently and totally disabled,

124 regardless of age, on or before the last day of the taxable year, to the extent includable in federal
125 adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical
126 certification from a prior year and he or she is still permanently and totally disabled, a copy of the
127 original certificate is acceptable as proof of disability. A copy of the form filed for the federal
128 disability income tax exclusion is acceptable: *Provided, however*, That:

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

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

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

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

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

146 (11) Contributions from any source to a medical savings account established by or for the
147 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to
148 the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the
149 amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000

150 plus interest earned on the account. For married individuals filing a joint return, the maximum
151 deduction is computed separately for each individual; and

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

155 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or
156 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
157 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
158 21-19 of this code.

159 (e) Partners and S corporation shareholders. — The amounts of modifications required to
160 be made under this section by a partner or an S corporation shareholder, which relate to items of
161 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
162 §11-21-17 of this code.

163 (f) Husband and wife. — If husband and wife determine their federal income tax on a joint
164 return but determine their West Virginia income taxes separately, they shall determine their West
165 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
166 determined separately.

167 (g) Effective date. —

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

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

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

NOTE: The purpose of this bill is to allow a surviving spouse one additional tax exemption

of \$20,000 beginning after December 31, 2023, for two taxable years after the death of the spouse. It also defines surviving spouse.

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