

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 460

**FISCAL
NOTE**

By Senator Chapman

[Introduced January 16, 2026; referred

to the Committee on Finance]

1 A BILL to amend and reenact §11-21-12 and §11-21-71 of the Code of West Virginia, 1931, as
2 amended, relating to exempting tips and overtime compensation from personal income
3 tax; and requiring such income to be reported by employers.

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24 (7) Amounts withdrawn from a medical savings account established by or for an individual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;

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 4 U.S.C. § 111 applies: *Provided, however,* That the total modification under this
53 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, Space Force, Coast Guard, Public Health Service, National
79 Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or
80 by this state after December 31, 2018, including any survivorship annuities, to the extent included
81 in 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 or after January 1, 2022, 100 percent of the social
88 security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including,
89 but not limited to, social security benefits paid by the Social Security Administration as Old Age,
90 Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 et. seq. or as
91 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381
92 et. seq., included in federal adjusted gross income for the taxable year shall be allowed as a
93 decreasing modification from federal adjusted gross income when determining West Virginia
94 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-
95 12(c)(8)(B) of this code.

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

99 (C) For taxable years beginning on and after January 1, 2024, 35 percent of the amount of
100 social security benefits received pursuant to Chapter 7 of Title 42 of the United States Code,
101 including, but not limited to, social security benefits paid by the Social Security Administration as
102 Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as
103 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381
104 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a
105 decreasing modification from federal adjusted gross income when determining West Virginia
106 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-
107 12(c)(8)(F) of this code.

108 (D) For taxable years beginning on or after January 1, 2025, 65 percent of the social
109 security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including,
110 but not limited to, social security benefits paid by the Social Security Administration as Old Age,
111 Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as
112 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381
113 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a
114 decreasing modification from federal adjusted gross income when determining West Virginia
115 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-
116 12(c)(8)(F) of this code.

117 (E) For taxable years beginning on or after January 1, 2026, 100 percent of the social
118 security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including,
119 but not limited to, social security benefits paid by the Social Security Administration as Old Age,
120 Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 et. seq. or as
121 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. 1381 et.
122 seq., included in federal adjusted gross income for the taxable year shall be allowed as a
123 decreasing modification from federal adjusted gross income when determining West Virginia
124 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-

125 12(c)(8)(F) of this code.

126 (F) The deduction allowed by §11-21-12(c)(8)(C), §11-21-12(c)(8)(D), and §11-21-
127 12(c)(8)(E) of this code are allowable only when the federal adjusted gross income of a married
128 couple filing a joint return exceeds \$100,000, or \$50,000 in the case of a single individual or a
129 married individual filing a separate return.

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

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

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

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

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

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

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

161 (12) For the taxable years beginning on and after January 1, 2027, tips and gratuity as
162 reported to an employer pursuant to Section 6053(a) of the Internal Revenue Code, which
163 includes:

164 (A) Cash tips received directly from customers;

165 (B) Tips from customers made by electronic settlement or payment;

166 (C) The value of any noncash tips;

167 (D) Tip amounts received from other employees paid through tip pools, tip splitting, or other
168 tip-sharing arrangements; and

169 (E) Allocated tips assigned to the employee by their employer and included in gross
170 income.

171 (13) For the taxable years beginning on and after January 1, 2027, overtime compensation
172 paid to an employee for working more than 40 hours in a work week in accordance with the Fair
173 Labor Standards of 1938, 29 U.S.C. §201 *et seq.* at a rate of not less than one and a half times the
174 regular pay rate; and

175 (14) Any other income which this state is prohibited from taxing under the laws of the
176 United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of

177 the Internal Revenue Code.

178 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or
179 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
180 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
181 21-19 of this code.

182 (e) Partners and S corporation shareholders. — The amounts of modifications required to
183 be made under this section by a partner or an S corporation shareholder, which relate to items of
184 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
185 §11-21-17 of this code.

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

190 (g) Effective date. —

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

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

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

197 (4) Changes in the language of this section enacted in the year 2024 shall apply
198 retroactively to taxable years beginning after December 31, 2023.

§11-21-71. Requirement of withholding tax from wages.

1 (a) *General.* -- Every employer maintaining an office or transacting business within this
2 state and making payment of any wage taxable under this article to a resident or nonresident
3 individual shall deduct and withhold from such wages for each payroll period a tax computed in

4 such manner as to result, so far as practicable, in withholding from the employee's wages during
5 each calendar year an amount substantially equivalent to the tax reasonably estimated to be due
6 under this article resulting from the inclusion in the employee's West Virginia adjusted gross
7 income of wages received during such calendar year, specifically indicating any amounts earned
8 from tips or as overtime compensation as defined in §11-21-12 of this code. The method of
9 determining the amount to be withheld shall be prescribed by the Tax Commissioner, with due
10 regard to the West Virginia withholding exemption of the employee and any low income exclusion
11 allowed to such employee under section ten of this article and asserted in good faith by the
12 employee. This section shall not apply to payments by the United States for service in the Armed
13 Forces of the United States: *Provided*, That the Tax Commissioner may execute an agreement
14 with the secretary of the treasury, as provided in 5 U.S.C. §5517, for the mandatory withholding of
15 tax under this section on pay to members of the National Guard while participating in exercises or
16 performing duty under 32 U.S.C. §502, and on pay to members of the ready reserve while
17 participating in scheduled drills or training periods or serving on active duty for training under 10
18 U.S.C. §270(a).

19 (b) *Withholding exemptions.* -- For purposes of this section:

20 (1) An employee shall be entitled to the same number of West Virginia withholding
21 exemptions as the number of withholding exemptions to which he or she is entitled for federal
22 income tax withholding purposes. An employer may rely upon the number of federal withholding
23 exemptions claimed by the employee, except where the employee claims a higher number of West
24 Virginia withholding exemptions.

25 (2) With respect to any taxable year beginning after December 31, 1986, the amount of
26 each West Virginia exemption shall be \$2,000 whether the individual is a resident or nonresident.

27 (c) *Exception for certain nonresidents.* -- If the income tax law of another state of the United
28 States or of the District of Columbia results in its residents being allowed a credit under section
29 forty sufficient to offset all taxes required by this article to be withheld from wages of an employee,

30 the Tax Commissioner may by regulation relieve the employers of such employees from
31 withholding requirements of this article with respect to such employees.

32 (d) *Effective date.* -- The provisions of this section, as amended in the year 1996, shall
33 apply to all taxable years or portions thereof beginning after June 30, 1996.

NOTE: The purpose of this bill is to exempt tips and overtime from state personal income taxes to encourage economic development through workforce participation and to encourage tourism by supporting the service industry.

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