

# **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;

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

(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Decreasing modification for social security income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Cash tips received directly from customers;

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

(C) The value of any noncash tips;

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

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

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

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



the Internal Revenue Code.

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

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

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

(g) Effective date. —

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

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

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

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

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

(a) *General.* -- Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident 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.