WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED

HOUSE BILL No. 1384

(By Mr. Polan)

Passed March 8, 1980

In Effect July 1, 1980
AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Personal Income Tax and modifications which increase or reduce federal adjusted gross income thereunder in determination of the state adjusted gross income of resident individuals; providing a reduction modification which exempts retirement income received from any police or firemen's retirement system, including any survivorship annuities thereunder; providing a maximum exemption allowable to persons who attain the age of sixty-five during the taxable year of eight thousand dollars annually, with such exemption to be applicable to adjusted gross income from any source and with the surviving spouse of any such person being entitled to such exemption; providing a reduction modification granting a maximum exemption of eight thousand dollars annually to persons permanently and totally disabled, regardless of age, as certified by proper authority during the taxable year, with such exemption being applicable to adjusted gross income received from any source, and with the surviving spouse of such person being entitled to such exemption; providing a conforming adjustment in the reduction modification which exempts certain military pay and allowances income relating to active service in the armed forces
by West Virginia residents by limiting such exemption to persons under the age of sixty-five; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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 federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

2. (b) Modifications increasing federal adjusted gross income. —There shall be added to federal adjusted gross income:

3. (1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

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

5. (3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax; and

6. (4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income.

7. (c) Modifications reducing federal adjusted gross income. —There shall be subtracted from federal adjusted gross income:

8. (1) Interest income on obligations of the United States
and its possessions to the extent includible 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 to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain;

(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 public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system, and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any police or firemen's retirement system, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first
day of December, one thousand nine hundred seventy-nine, by any person who has attained the age of sixty-five 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 includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision, and

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

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivision.

(9) Any pay or allowances received after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-
five as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars.

(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 section nineteen.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen.

(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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence L. Durham, Jr.  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1980.

F. C. Wiles  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

J. T. Elliott  
President of the Senate

C. H. Beale  
Speaker House of Delegates

The within ___________ this the ___________ day of ___________, 1980.

__________________________  
Governor