

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-24-80

Time 1:00 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



# ENROLLED

HOUSE BILL No. 1384

(By Mr. Polan )



Passed March 8, 1980

In Effect July 1, 1980 ~~Passage~~



No: 1384

**ENROLLED**

# **H. B. 1384**

(By MR. POLAN)

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(Originating in the House Committee on Finance)

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[Passed March 8, 1980; in effect July 1, 1980.]

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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  
2 of a resident individual means his federal adjusted gross in-  
3 come as defined in the laws of the United States for the  
4 taxable year with the modifications specified in this section.

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

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

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

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

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

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

26 (1) Interest income on obligations of the United States

27 and its possessions to the extent includible in gross income  
28 for federal income tax purposes;

29 (2) Interest or dividend income on obligations or secur-  
30 ities of any authority, commission or instrumentality of the  
31 United States to the extent includible in gross income for  
32 federal income tax purposes but exempt from state income  
33 taxes under the laws of the United States;

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

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

48 (5) Annuities, retirement allowances, returns of contri-  
49 butions and any other benefit received under the public em-  
50 ployees retirement system, the department of public safety  
51 death, disability and retirement fund, the state teachers retire-  
52 ment system, and all forms of military retirement, including  
53 regular armed forces, reserves and national guard, including  
54 any survivorship annuities derived therefrom, to the extent in-  
55 cludible in gross income for federal income tax purposes;

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

62 (7) Federal adjusted gross income in the amount of eight  
63 thousand dollars received from any source after the thirty-first

64 day of December, one thousand nine hundred seventy-nine, by  
65 any person who has attained the age of sixty-five on or be-  
66 fore the last day of the taxable year, or by any person certi-  
67 fied by proper authority as permanently and totally disabled,  
68 regardless of age, on or before the last day of the taxable year,  
69 to the extent includible in federal adjusted gross income for  
70 federal tax purposes: *Provided*, That

71 (i) Where the total modification under subdivisions (1), (2),  
72 (5) and (6) of this subsection is eight thousand dollars per  
73 person or more, no deduction shall be allowed under this sub-  
74 division, and

75 (ii) Where the total modification under subdivisions (1),  
76 (2), (5) and (6) of this subsection is less than eight thousand  
77 dollars per person, the total modification allowed under this  
78 subdivision for all gross income received by such person shall  
79 be limited to the difference between eight thousand dollars and  
80 the sum of modifications under such subdivisions;

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

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88 (i) Where the total modification under subdivisions (1), (2),  
89 (5), (6) and (7) of this subsection is eight thousand dollars or  
90 more, no deduction shall be allowed under this subdivision,  
91 and

92 (ii) Where the total modification under subdivisions (1),  
93 (2), (5), (6) and (7) of this subsection is less than eight thou-  
94 sand dollars per person the total modification allowed under  
95 this subdivision for all gross income received by such person  
96 shall be limited to the difference between eight thousand dol-  
97 lars and the sum of such subdivision.

98 (9) Any pay or allowances received after the thirty-first  
99 day of December, one thousand nine hundred seventy-nine, by  
100 West Virginia residents who have not attained the age of sixty-

101 five as compensation for active service in the armed forces of  
102 the United States: *Provided*, That such deduction shall be  
103 limited to an amount not to exceed four thousand dollars.

104 (d) *Modification for West Virginia fiduciary adjustment.*—  
105 There shall be added to or subtracted from federal adjusted  
106 gross income, as the case may be, the taxpayer's share, as  
107 beneficiary of an estate or trust, of the West Virginia fidu-  
108 ciary adjustment determined under section nineteen.

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

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

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

James L. Davis  
Chairman Senate Committee

Clarence C. Christian Jr  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1980.

Todd C. Wittes  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

H. T. Burton Jr  
President of the Senate

Clayton M. Lee Jr  
Speaker House of Delegates

The within is approved this the 24  
day of March, 1980.

John D. Rhyne W  
Governor

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