



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## Senate Bill No. 400

(By MR. MCGRAW, MR. PRESIDENT, *original sponsor*)

[Passed March 2, 1982; in effect from passage.]

AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act; and amending the definition of West Virginia adjusted gross income by adding additional modifications increasing and reducing federal adjusted gross income in determining West Virginia adjusted gross income.

*Be it enacted by the Legislature of West Virginia:*

That sections nine and 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.**

#### **§11-21-9. Meaning of terms.**

1 Any term used in this article shall have the same  
2 meaning as when used in a comparable context in the  
3 laws of the United States relating to income taxes, unless  
4 a different meaning is clearly required. Any reference  
5 in this article to the laws of the United States shall mean  
6 the provisions of the Internal Revenue Code of 1954, as  
7 amended, and such other provisions of the laws of the  
8 United States as relate to the determination of income  
9 for federal income tax purposes. All amendments made  
10 to the laws of the United States prior to the first day of

11 January, one thousand nine hundred eighty-two, shall be  
12 given effect in determining the taxes imposed by this  
13 article for the tax period beginning the first day of  
14 January, one thousand nine hundred eighty-one, and  
15 thereafter, but no amendment to the laws of the United  
16 States made on or after the first day of January, one  
17 thousand nine hundred eighty-two, shall be given effect.

**§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.*—The West Virginia adjusted gross in-  
2 come of a resident individual means his federal adjusted  
3 gross income as defined in the laws of the United States  
4 for the taxable year with the modifications specified in  
5 this section.

6 (b) *Modifications increasing federal adjusted gross*  
7 *income.*—There shall be added to federal adjusted gross  
8 income the following items, except that modifications  
9 (5), (6) and (7) shall be required only with respect to  
10 tax periods ending on or after the first day of January,  
11 one thousand nine hundred eighty-two:

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

16 (2) Interest or dividend income on obligations or  
17 securities of any authority, commission or instrumentality  
18 of the United States, which the laws of the United States  
19 exempt from federal income tax but not from state in-  
20 come taxes;

21 (3) Income taxes imposed by this state or any other  
22 taxing jurisdiction, to the extent deductible in determin-  
23 ing federal adjusted gross income and not credited against  
24 federal income tax;

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

30 (5) Interest on a depository institution tax-exempt

31 savings certificate which is allowed as an exclusion from  
32 federal gross income under section 128 of the Internal  
33 Revenue Code, for the federal taxable year;

34 (6) The amount allowed as a deduction from federal  
35 gross income under section 221 of the Internal Revenue  
36 Code by married couples who file a joint federal return  
37 for the federal taxable year; and

38 (7) The deferral value of certain income that is not  
39 recognized for federal tax purposes, which value shall  
40 be an amount equal to a percentage of the amount al-  
41 lowed as a deduction in determining federal adjusted  
42 gross income pursuant to the accelerated cost recovery  
43 system under section 168 of the Internal Revenue Code  
44 for the federal taxable year, with the percentage of the  
45 federal deduction to be added as follows with respect to  
46 the following recovery property: three-year property—  
47 no modification; five-year property—ten percent; ten-  
48 year property—fifteen percent; fifteen-year public utility  
49 property—twenty-five percent; and fifteen-year real  
50 property—thirty-five percent: *Provided*, That this modi-  
51 fication shall not apply to any person whose federal de-  
52 duction is determined by the use of the straight line  
53 method.

54 (c) *Modifications reducing federal adjusted gross in-*  
55 *come.*—There shall be subtracted from federal adjusted  
56 gross income:

57 (1) Interest income on obligations of the United States  
58 and its possessions to the extent includible in gross in-  
59 come for federal income tax purposes;

60 (2) Interest or dividend income on obligations or  
61 securities of any authority, commission or instrumental-  
62 ity of the United States to the extent includible in gross  
63 income for federal income tax purposes but exempt from  
64 state income taxes under the laws of the United States;

65 (3) Any gain from the sale or other disposition of  
66 property having a higher fair market value on the first  
67 day of January, one thousand nine hundred sixty-one,  
68 than the adjusted basis at said date for federal income  
69 tax purposes: *Provided*, That the amount of this adjust-  
70 ment is limited to that portion of any such gain which

71 does not exceed the difference between such fair market  
72 value and such adjusted basis: *Provided, however,* That if  
73 such gain is considered a long-term capital gain for  
74 federal income tax purposes, the modification shall be

75 limited to forty per centum of such portion of the gain;  
76 (4) The amount of any refund or credit for over-  
77 payment of income taxes imposed by this state, or any  
78 other taxing jurisdiction, to the extent properly included  
79 in gross income for federal income tax purposes;

80 (5) Annuities, retirement allowances, returns of con-  
81 tributions and any other benefit received under the  
82 public employees retirement system, the department of  
83 public safety death, disability and retirement fund, the  
84 state teachers retirement system, and all forms of mili-  
85 tary retirement, including regular armed forces, reserves  
86 and national guard, including any survivorship annuities  
87 derived therefrom, to the extent includible in gross in-  
88 come for federal income tax purposes;

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

95 (7) Federal adjusted gross income in the amount of  
96 eight thousand dollars received from any source after  
97 the thirty-first day of December, one thousand nine  
98 hundred seventy-nine, by any person who has attained  
99 the age of sixty-five on or before the last day of the  
100 taxable year, or by any person certified by proper  
101 authority as permanently and totally disabled, regardless  
102 of age, on or before the last day of the taxable year, to  
103 the extent includible in federal adjusted gross income  
104 for federal tax purposes: *Provided,* That

105 (i) Where the total modification under subdivisions  
106 (1), (2), (5) and (6) of this subsection is eight thousand  
107 dollars per person or more, no deduction shall be al-  
108 lowed under this subdivision, and

109 (ii) Where the total modification under subdivisions  
110 (1), (2), (5) and (6) of this subsection is less than eight

111 thousand dollars per person, the total modification al-  
112 lowed under this subdivision for all gross income received  
113 by such person shall be limited to the difference between  
114 eight thousand dollars and the sum of modifications  
115 under such subdivisions;

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

124 (i) Where the total modification under subdivisions  
125 (1), (2), (5), (6) and (7) of this subsection is eight  
126 thousand dollars or more, no deduction shall be allowed  
127 under this subdivision, and

128 (ii) Where the total modification under subdivisions  
129 (1), (2), (5), (6) and (7) of this subsection is less than  
130 eight thousand dollars per person the total modification  
131 allowed under this subdivision for all gross income  
132 received by such person shall be limited to the difference  
133 between eight thousand dollars and the sum of such  
134 subdivisions; and

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

142 (d) *Modification for West Virginia fiduciary adjust-*  
143 *ment.*—There shall be added to or subtracted from federal  
144 adjusted gross income, as the case may be, the taxpayer's  
145 share, as beneficiary of an estate or trust, of the West  
146 Virginia fiduciary adjustment determined under section  
147 nineteen of this article.

148 (e) *Partners.*—The amounts of modifications required  
149 to be made under this section by a partner, which relate  
150 to items of income, gain, loss or deduction of a partner-

151 ship, shall be determined under section seventeen of this  
152 article.

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

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

*[Signature]*  
Chairman Senate Committee

*[Signature]*  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

*[Signature]*  
Clerk of the Senate

*[Signature]*  
Clerk of the House of Delegates

*[Signature]*  
President of the Senate

*[Signature]*  
Speaker House of Delegates

The within is approved this the 9  
day of March, 1982.

*[Signature]*  
Governor



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