WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 93

(By Senator Craig, et al.)

PASSED February 13, 1996
In Effect from Passage
ENROLLED

Senate Bill No. 93

(By Senators Craigo, Blatnik, Chafin, Dugan, Helmick, Kimble, Love, Macnaughtan, Manchin, Minear, Plymale, Sharpe, Walker and Whitlow)

[Passed February 13, 1996; 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, all relating to updating meaning of certain terms used in the personal income tax; making such updating retroactive; preserving law in effect for each prior tax year for such year; defining certain additional terms; making technical corrections in the definition of West Virginia adjusted gross income; deleting obsolete language; and specifying effective date.

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.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-six, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred ninety-five, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-six, shall be given any effect. The exception to the preceding rule is the change in federal income tax law restoring subsection (l), Section 162 of the Internal Revenue Code for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-four, which shall be allowed under this article for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-four.

(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen or section fifteen, article sixteen, both of chapter thirty-three of this code. Employer contributions to a medical savings account established pursuant to said sections are not “wages” for purposes of withholding under section seventy-one of this article.
(c) **Surtax.** — The term "surtax" means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code, and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter, which are collected by the tax commissioner as tax collected under this article.

(d) **Effective date.** — The amendments to this section enacted in the year one thousand nine hundred ninety-six shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-five, except as otherwise provided in subsection (a) of this section, to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-four, the law in effect for each of those years shall be fully preserved as to such year.

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

(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.

(b) **Modifications increasing federal adjusted gross income.** — There shall be added to federal adjusted gross income unless already included therein the following items:

1. Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;
2. Interest or dividend income on obligations or securities of any authority, commission or instrumental-
(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 instrumental-ity 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 the thirtieth day of June, one thousand nine hundred eighty-seven;

(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, the West Virginia 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 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 two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia 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 includable in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: Provided, however, That the total modification under this paragraph shall not exceed two thousand dollars per
person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

(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 West Virginia police, West Virginia firemen's retirement system or the West Virginia department of public safety death, disability and retirement fund, including any survivorship annuities derived therefrom, to the extent includable 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 eighty-six, 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 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 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) 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 that person shall be limited to the difference between eight thousand dollars and the sum of modifications
under subdivisions (1), (2), (5) and (6);

(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 eighty-six, 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 includable 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 that person shall be limited to the difference between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6) and (7);

(9) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen or section fifteen, article sixteen, chapter thirty-three 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 two thousand dollars plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(10) Any other income which this state is prohibited from taxing under the laws of the United States.

(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 of this article.

(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 section seventeen of this article.

(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. — Changes in the language of this
section enacted in the year one thousand nine hundred
ninety-six, shall apply to taxable years beginning after
the thirty-first day of December, one thousand nine
hundred ninety-five.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 21st day of February, 1996.

Governor
PRESENTED TO THE
GOVERNOR
Date 2/19/96
Time 10:20 AM