

SB 669

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

SENATE BILL NO. 669

(By Senator Plymale, et al)



PASSED March 11, 2000
In Effect from Passage

ENROLLED

Senate Bill No. 669

(BY SENATORS PLYMALE, CRAIGO, ANDERSON, BAILEY,
BOWMAN, CHAFIN, EDGELL, HELMICK, JACKSON, LOVE,
PREZIOSO, SHARPE, UNGER, WALKER,
BOLEY, MINEAR AND SPROUSE)

[Passed March 11, 2000; in effect from passage.]

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 setting forth a formula to exempt military retirement from the personal income tax; providing that the formula applies to up to thirty thousand dollars of military retirement income; setting forth effective date and applicable time periods; setting forth the types of military income which may be exempted; and making technical corrections.

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
3 income as defined in the laws of the United States for the
4 taxable year with the modifications specified in this
5 section.

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

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

14 (2) Interest or dividend income on obligations or securi-
15 ties of any authority, commission or instrumentality of the
16 United States, which the laws of the United States exempt
17 from federal income tax but not from state income taxes;

18 (3) Any deduction allowed when determining federal
19 adjusted gross income for federal income tax purposes for
20 the taxable year that is not allowed as a deduction under
21 this article for the taxable year;

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

26 (5) Interest on a depository institution tax-exempt
27 savings certificate which is allowed as an exclusion from
28 federal gross income under Section 128 of the Internal
29 Revenue Code, for the federal taxable year;

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

34 (7) Amounts withdrawn from a medical savings account
35 established by or for an individual under section twenty,
36 article fifteen or section fifteen, article sixteen, both of
37 chapter thirty-three of this code, that are used for a
38 purpose other than payment of medical expenses, as
39 defined in those sections.

40 (c) *Modifications reducing federal adjusted gross income.*
41 – There shall be subtracted from federal adjusted gross
42 income to the extent included therein:

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

46 (2) Interest or dividend income on obligations or securi-
47 ties of any authority, commission or instrumentality of the
48 United States or of the state of West Virginia to the extent
49 includable in gross income for federal income tax purposes
50 but exempt from state income taxes under the laws of the
51 United States or of the state of West Virginia, including
52 federal interest or dividends paid to shareholders of a
53 regulated investment company, under Section 852 of the
54 Internal Revenue Code for taxable years ending after the
55 thirtieth day of June, one thousand nine hundred eighty-
56 seven;

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

61 (4) The amount of any refund or credit for overpayment
62 of income taxes imposed by this state, or any other taxing

63 jurisdiction, to the extent properly included in gross
64 income for federal income tax purposes;

65 (5) Annuities, retirement allowances, returns of contri-
66 butions and any other benefit received under the West
67 Virginia public employees retirement system, the West
68 Virginia state teachers retirement system and all forms of
69 military retirement, including regular armed forces,
70 reserves and national guard, including any survivorship
71 annuities derived therefrom, to the extent includable in
72 gross income for federal income tax purposes: *Provided*,
73 That notwithstanding any provisions in this code to the
74 contrary this modification shall be limited to the first two
75 thousand dollars of benefits received under the West
76 Virginia public employees retirement system, the West
77 Virginia state teachers retirement system and, including
78 any survivorship annuities derived therefrom, to the extent
79 includable in gross income for federal income tax purposes
80 for taxable years beginning after the thirty-first day of
81 December, one thousand nine hundred eighty-six; and the
82 first two thousand dollars of benefits received under any
83 federal retirement system to which Title 4 U.S.C. § 111
84 applies: *Provided, however*, That the total modification
85 under this paragraph shall not exceed two thousand
86 dollars per person receiving retirement benefits and this
87 limitation shall apply to all returns or amended returns
88 filed after the last day of December, one thousand nine
89 hundred eighty-eight;

90 (6) Retirement income received in the form of pensions
91 and annuities after the thirty-first day of December, one
92 thousand nine hundred seventy-nine, under any West
93 Virginia police, West Virginia firemen's retirement system
94 or the West Virginia state police death, disability and
95 retirement fund, the West Virginia state police retirement
96 system, or the West Virginia deputy sheriff retirement
97 system, including any survivorship annuities derived any

98 of these programs, to the extent includable in gross income
99 for federal income tax purposes;

100 (7) An amount equal to two percent multiplied by the
101 number of years of active duty in the armed forces of the
102 United States of America with the product thereof multi-
103 plied by the first thirty thousand dollars of military
104 retirement income, including retirement income from the
105 regular armed forces, reserves and national guard paid by
106 the United States or by this state after the thirty-first day
107 of December, two thousand including any survivorship
108 annuities, to the extent included in gross income for
109 federal income tax purposes for the taxable year: *Pro-*
110 *vided*, That in the event that any of the provisions of this
111 subdivision are found by a court of competent jurisdiction
112 to violate either the constitution of this state or of the
113 United States, or is held to be extended to persons other
114 than specified in this subdivision, this subdivision shall
115 become null and void by operation of law.

116 (8) Federal adjusted gross income in the amount of eight
117 thousand dollars received from any source after the thirty-
118 first day of December, one thousand nine hundred eighty-
119 six, by any person who has attained the age of sixty-five
120 on or before the last day of the taxable year, or by any
121 person certified by proper authority as permanently and
122 totally disabled, regardless of age, on or before the last day
123 of the taxable year, to the extent includable in federal
124 adjusted gross income for federal tax purposes: *Provided*,
125 That if a person has a medical certification from a prior
126 year and he is still permanently and totally disabled, a
127 copy of the original certificate is acceptable as proof of
128 disability. A copy of the form filed for the federal disabili-
129 ty income tax exclusion is acceptable: *Provided, however*,
130 That:

131 (i) Where the total modification under subdivisions (1),
132 (2), (5), (6) and (7) of this subsection is eight thousand

133 dollars per person or more, no deduction shall be allowed
134 under this subdivision; and

135 (ii) Where the total modification under subdivisions (1),
136 (2), (5), (6) and (7) of this subsection is less than eight
137 thousand dollars per person, the total modification
138 allowed under this subdivision for all gross income
139 received by that person shall be limited to the difference
140 between eight thousand dollars and the sum of modifica-
141 tions under subdivisions (1), (2), (5), (6) and (7) of this
142 subsection;

143 (9) Federal adjusted gross income in the amount of eight
144 thousand dollars received from any source after the thirty-
145 first day of December, one thousand nine hundred eighty-
146 six, by the surviving spouse of any person who had at-
147 tained the age of sixty-five or who had been certified as
148 permanently and totally disabled, to the extent includable
149 in federal adjusted gross income for federal tax purposes:
150 *Provided, That:*

151 (i) Where the total modification under subdivisions (1),
152 (2), (5), (6), (7) and (8) of this subsection is eight thousand
153 dollars or more, no deduction shall be allowed under this
154 subdivision; and

155 (ii) Where the total modification under subdivisions (1),
156 (2), (5), (6), (7) and (8) of this subsection is less than eight
157 thousand dollars per person, the total modification
158 allowed under this subdivision for all gross income
159 received by that person shall be limited to the difference
160 between eight thousand dollars and the sum of subdivi-
161 sions (1), (2), (5), (6), (7) and (8) of this subsection;

162 (10) Contributions from any source to a medical savings
163 account established by or for the individual pursuant to
164 section twenty, article fifteen or section fifteen, article
165 sixteen, chapter thirty-three of this code, plus interest
166 earned on the account, to the extent includable in federal

167 adjusted gross income for federal tax purposes: *Provided*,
168 That the amount subtracted pursuant to this subdivision
169 for any one taxable year may not exceed two thousand
170 dollars plus interest earned on the account. For married
171 individuals filing a joint return, the maximum deduction
172 is computed separately for each individual; and

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

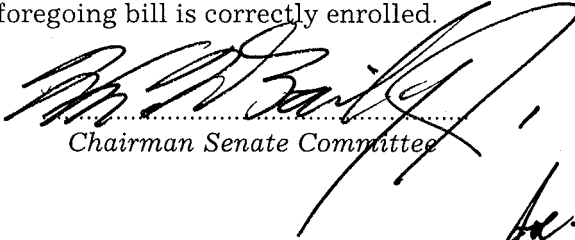
175 (d) *Modification for West Virginia fiduciary adjustment.*—
176 There shall be added to or subtracted from federal ad-
177 justed gross income, as the case may be, the taxpayer's
178 share, as beneficiary of an estate or trust, of the West
179 Virginia fiduciary adjustment determined under section
180 nineteen of this article.

181 (e) *Partners and S corporation shareholders.* — The
182 amounts of modifications required to be made under this
183 section by a partner or an S corporation shareholder,
184 which relate to items of income, gain, loss or deduction of
185 a partnership or an S corporation, shall be determined
186 under section seventeen of this article.

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

193 (g) *Effective date.* — Changes in the language of this
194 section enacted in the year two thousand shall apply to
195 taxable years beginning after the thirty-first day of
196 December, two thousand.

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



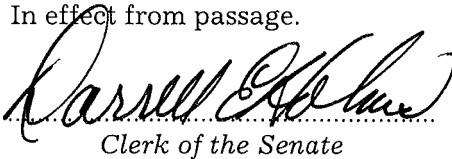
Chairman Senate Committee




Chairman House Committee

Originated in the Senate.

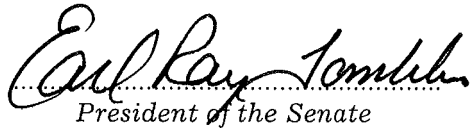
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within.....*approved*..... this the.....*5th*.....
Day of.....*April*....., 2000



Governor

PRESENTED TO THE

GOVERNOR

Date

3/20/00

Time

4:01 pm