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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

SENATE BILL NO. 713

(By Senator Hunter, et al)

PASSED March 9, 2002

In Effect 90 days from Passage

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Senate Bill No. 713

(BY SENATORS HUNTER, EDGELL, BAILEY, CALDWELL,
MINARD, OLIVERIO, BOLEY AND DEEM)

[Passed March 9, 2002; in effect ninety days 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 exempting the first twenty thousand dollars in benefits derived from military retirement from personal income tax obligations.

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.

PART II. RESIDENTS.

§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 or her 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 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, chapter thirty-three of this code or section
37 fifteen, article sixteen of said chapter, 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 from
98 any of these programs, to the extent includable in gross
99 income for federal income tax purposes;

100 (7) (A) For taxable years beginning after the thirty-first
101 day of December, two thousand, and ending prior to the
102 first day of January, two thousand three, an amount equal
103 to two percent multiplied by the number of years of active
104 duty in the armed forces of the United States of America
105 with the product thereof multiplied by the first thirty

106 thousand dollars of military retirement income, including
107 retirement income from the regular armed forces, reserves
108 and national guard paid by the United States or by this
109 state after the thirty-first day of December, two thousand,
110 including any survivorship annuities, to the extent in-
111 cluded in gross income for federal income tax purposes for
112 the taxable year.

113 (B) For taxable years beginning after the thirty-first day
114 of December, two thousand two, the first twenty thousand
115 dollars of military retirement income, including retirement
116 income from the regular armed forces, reserves and
117 national guard paid by the United States or by this state
118 after the thirty-first day of December, two thousand two,
119 including any survivorship annuities, to the extent in-
120 cluded in gross income for federal income tax purposes for
121 the taxable year.

122 (C) In the event that any of the provisions of this subdivi-
123 sion are found by a court of competent jurisdiction to
124 violate either the constitution of this state or of the United
125 States, or is held to be extended to persons other than
126 specified in this subdivision, this subdivision shall become
127 null and void by operation of law.

128 (8) Federal adjusted gross income in the amount of eight
129 thousand dollars received from any source after the thirty-
130 first day of December, one thousand nine hundred eighty-
131 six, by any person who has attained the age of sixty-five
132 on or before the last day of the taxable year, or by any
133 person certified by proper authority as permanently and
134 totally disabled, regardless of age, on or before the last day
135 of the taxable year, to the extent includable in federal
136 adjusted gross income for federal tax purposes: *Provided*,
137 That if a person has a medical certification from a prior
138 year and he or she is still permanently and totally dis-
139 abled, a copy of the original certificate is acceptable as
140 proof of disability. A copy of the form filed for the federal
141 disability income tax exclusion is acceptable: *Provided*,
142 *however*, That:

143 (i) Where the total modification under subdivisions (1),
144 (2), (5), (6) and (7) of this subsection is eight thousand
145 dollars per person or more, no deduction shall be allowed
146 under this subdivision; and

147 (ii) Where the total modification under subdivisions (1),
148 (2), (5), (6) and (7) of this subsection is less than eight
149 thousand dollars per person, the total modification
150 allowed under this subdivision for all gross income
151 received by that person shall be limited to the difference
152 between eight thousand dollars and the sum of modifica-
153 tions under subdivisions (1), (2), (5), (6) and (7) of this
154 subsection;

155 (9) Federal adjusted gross income in the amount of eight
156 thousand dollars received from any source after the thirty-
157 first day of December, one thousand nine hundred eighty-
158 six, by the surviving spouse of any person who had at-
159 tained the age of sixty-five or who had been certified as
160 permanently and totally disabled, to the extent includable
161 in federal adjusted gross income for federal tax purposes:
162 *Provided, That:*

163 (i) Where the total modification under subdivisions (1),
164 (2), (5), (6), (7) and (8) of this subsection is eight thousand
165 dollars or more, no deduction shall be allowed under this
166 subdivision; and

167 (ii) Where the total modification under subdivisions (1),
168 (2), (5), (6), (7) and (8) of this subsection is less than eight
169 thousand dollars per person, the total modification
170 allowed under this subdivision for all gross income
171 received by that person shall be limited to the difference
172 between eight thousand dollars and the sum of subdivi-
173 sions (1), (2), (5), (6), (7) and (8) of this subsection;

174 (10) Contributions from any source to a medical savings
175 account established by or for the individual pursuant to
176 section twenty, article fifteen, chapter thirty-three of this
177 code or section fifteen, article sixteen of said chapter, plus

178 interest earned on the account, to the extent includable in
179 federal adjusted gross income for federal tax purposes:
180 *Provided*, That the amount subtracted pursuant to this
181 subdivision for any one taxable year may not exceed two
182 thousand dollars plus interest earned on the account. For
183 married individuals filing a joint return, the maximum
184 deduction is computed separately for each individual; and

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

187 (d) *Modification for West Virginia fiduciary adjustment.*
188 – There shall be added to or subtracted from federal
189 adjusted gross income, as the case may be, the taxpayer's
190 share, as beneficiary of an estate or trust, of the West
191 Virginia fiduciary adjustment determined under section
192 nineteen of this article.

193 (e) *Partners and S corporation shareholders.* – The
194 amounts of modifications required to be made under this
195 section by a partner or an S corporation shareholder,
196 which relate to items of income, gain, loss or deduction of
197 a partnership or an S corporation, shall be determined
198 under section seventeen of this article.

199 (f) *Husband and wife.* – If husband and wife determine
200 their federal income tax on a joint return but determine
201 their West Virginia income taxes separately, they shall
202 determine their West Virginia adjusted gross incomes
203 separately as if their federal adjusted gross incomes had
204 been determined separately.

205 (g) *Effective date.* –(1) Changes in the language of this
206 section enacted in the year two thousand shall apply to
207 taxable years beginning after the thirty-first day of
208 December, two thousand.

209 (2) Changes in the language of this section enacted in the
210 year two thousand two shall apply to taxable years
211 beginning after the thirty-first day of December, two
212 thousand two.

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

Emily Dineen
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Blaine
.....
Clerk of the Senate

Gregg D. Boy
.....
Clerk of the House of Delegates

Carl Kay Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 28th
Day of March, 2002.

Bob Wise
.....
Governor

REC'D BY PHONE

DATE

3/25/02

TIME

11:35 am