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
ENROLLED

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.
(a) General. – The West Virginia adjusted gross income of a resident individual means his or her 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 instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

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

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

6. The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and
(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, that are used for a purpose other than payment of medical expenses, as defined in those sections.

(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 instrumentality 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, 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 state police death, disability and retirement fund, the West Virginia state police retirement system or the West Virginia deputy sheriff retirement system, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after the thirty-first day of December, two thousand, and ending prior to the first day of January, two thousand three, an amount equal to two percent multiplied by the number of years of active duty in the armed forces of the United States of America with the product thereof multiplied by the first thirty
thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and national guard paid by the United States or by this state after the thirty-first day of December, two thousand, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

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

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

(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 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 or she 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), (6) and (7) 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), (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 modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) 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), (7) and (8) 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), (7) and (8) 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), (7) and (8) of this subsection;

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

(11) 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. - (1) Changes in the language of this section enacted in the year two thousand shall apply to taxable years beginning after the thirty-first day of December, two thousand.

(2) Changes in the language of this section enacted in the year two thousand two shall apply to taxable years beginning after the thirty-first day of December, two thousand two.
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 ninety days 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 March, 2002.

Governor