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WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2013

SB65



ENROLLED

Senate Bill No. 65

(By SENATORS TUCKER, MILLER, SYPOLT AND WILLIAMS)

[PASSED APRIL 12, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

FILED
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SECRETARY OF STATE

ENROLLED
Senate Bill No. 65

(BY SENATORS TUCKER, MILLER, SYPOLT AND WILLIAMS)

[Passed April 12, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-1 of said code, all relating to pension benefits exempt from state income taxation; and including Division of Natural Resources police into the class of law-enforcement officers exempted.

Be it enacted by the Legislature of West Virginia:

That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-7-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

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 or her federal adjusted
3 gross income as defined in the laws of the United States for
4 the 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 items:**

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

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

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

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

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

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

33 **(7) Amounts withdrawn from a medical savings account**
34 **established by or for an individual under section twenty,**
35 **article fifteen, chapter thirty-three of this code or section**

36 fifteen, article sixteen of said chapter that are used for a
37 purpose other than payment of medical expenses, as defined
38 in those sections.

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

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

45 (2) Interest or dividend income on obligations or
46 securities of any authority, commission or instrumentality of
47 the United States or of the State of West Virginia to the
48 extent includable in gross income for federal income tax
49 purposes but exempt from state income taxes under the laws
50 of the United States or of the State of West Virginia,
51 including federal interest or dividends paid to shareholders of
52 a regulated investment company, under Section 852 of the
53 Internal Revenue Code for taxable years ending after June 30,
54 1987;

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

59 (4) The amount of any refund or credit for overpayment
60 of income taxes imposed by this state, or any other taxing
61 jurisdiction, to the extent properly included in gross income
62 for federal income tax purposes;

63 (5) Annuities, retirement allowances, returns of
64 contributions and any other benefit received under the West
65 Virginia Public Employees Retirement System, the West
66 Virginia State Teachers Retirement System and all forms of

67 military retirement, including regular armed forces, reserve
68 and National Guard, including any survivorship annuities
69 derived therefrom, to the extent includable in gross income
70 for federal income tax purposes: *Provided*, That
71 notwithstanding any provisions in this code to the contrary
72 this modification shall be limited to the first \$2,000 of
73 benefits received under the West Virginia Public Employees
74 Retirement System, the West Virginia State Teachers
75 Retirement System and, including any survivorship annuities
76 derived therefrom, to the extent includable in gross income
77 for federal income tax purposes for taxable years beginning
78 after December 31, 1986; and the first \$2,000 of benefits
79 received under any federal retirement system to which Title
80 4 U. S. C. §111 applies: *Provided, however*, That the total
81 modification under this paragraph shall not exceed \$2,000 per
82 person receiving retirement benefits and this limitation shall
83 apply to all returns or amended returns filed after December
84 31, 1988;

85 (6) Retirement income received in the form of pensions
86 and annuities after December 31, 1979, under any West
87 Virginia police, West Virginia Firemen's Retirement System
88 or the West Virginia State Police Death, Disability and
89 Retirement Fund, the West Virginia State Police Retirement
90 System, the West Virginia Deputy Sheriff Retirement System
91 or the West Virginia Public Employees Retirement System if
92 paid to police officers retired from the Department of Natural
93 Resources, including those formerly classified as
94 conservation officers, including any survivorship annuities
95 derived from any of these programs, to the extent includable
96 in gross income for federal income tax purposes;

97 (7) (A) For taxable years beginning after December 31,
98 2000, and ending prior to January 1, 2003, an amount equal
99 to two percent multiplied by the number of years of active
100 duty in the armed forces of the United States of America with
101 the product thereof multiplied by the first \$30,000 of military

102 retirement income, including retirement income from the
103 regular armed forces, reserve and National Guard paid by the
104 United States or by this state after December 31, 2000,
105 including any survivorship annuities, to the extent included
106 in gross income for federal income tax purposes for the
107 taxable year.

108 (B) For taxable years beginning after December 31, 2002,
109 the first \$20,000 of military retirement income, including
110 retirement income from the regular armed forces, reserve and
111 National Guard paid by the United States or by this state after
112 December 31, 2002, including any survivorship annuities, to
113 the extent included in gross income for federal income tax
114 purposes for the taxable year.

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

121 (8) Federal adjusted gross income in the amount of
122 \$8,000 received from any source after December 31, 1986,
123 by any person who has attained the age of sixty-five on or
124 before the last day of the taxable year, or by any person
125 certified by proper authority as permanently and totally
126 disabled, regardless of age, on or before the last day of the
127 taxable year, to the extent includable in federal adjusted gross
128 income for federal tax purposes: *Provided*, That if a person
129 has a medical certification from a prior year and he or she is
130 still permanently and totally disabled, a copy of the original
131 certificate is acceptable as proof of disability. A copy of the
132 form filed for the federal disability income tax exclusion is
133 acceptable: *Provided, however*, That:

134 (i) Where the total modification under subdivisions (1),
135 (2), (5), (6) and (7) of this subsection is \$8,000 per person or
136 more, no deduction shall be allowed under this subdivision;
137 and

138 (ii) Where the total modification under subdivisions (1),
139 (2), (5), (6) and (7) of this subsection is less than \$8,000 per
140 person, the total modification allowed under this subdivision
141 for all gross income received by that person shall be limited
142 to the difference between \$8,000 and the sum of
143 modifications under subdivisions (1), (2), (5), (6) and (7) of
144 this subsection;

145 (9) Federal adjusted gross income in the amount of
146 \$8,000 received from any source after December 31, 1986,
147 by the surviving spouse of any person who had attained the
148 age of sixty-five or who had been certified as permanently
149 and totally disabled, to the extent includable in federal
150 adjusted gross income for federal tax purposes: *Provided,*
151 That:

152 (i) Where the total modification under subdivisions (1),
153 (2), (5), (6), (7) and (8) of this subsection is \$8,000 or more,
154 no deduction shall be allowed under this subdivision; and

155 (ii) Where the total modification under subdivisions (1),
156 (2), (5), (6), (7) and (8) of this subsection is less than \$8,000
157 per person, the total modification allowed under this
158 subdivision for all gross income received by that person shall
159 be limited to the difference between \$8,000 and the sum of
160 subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

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

167 That the amount subtracted pursuant to this subdivision for
168 any one taxable year may not exceed \$2,000 plus interest
169 earned on the account. For married individuals filing a joint
170 return, the maximum deduction is computed separately for
171 each individual;

172 (11) For the 2006 taxable year only, severance wages
173 received by a taxpayer from an employer as the result of the
174 taxpayer's permanent termination from employment through
175 a reduction in force and through no fault of the employee, not
176 to exceed \$30,000. For purposes of this subdivision:

177 (i) The term "severance wages" means any monetary
178 compensation paid by the employer in the taxable year as a
179 result of permanent termination from employment in excess
180 of regular annual wages or regular annual salary;

181 (ii) The term "reduction in force" means a net reduction
182 in the number of employees employed by the employer in
183 West Virginia, determined based on total West Virginia
184 employment of the employer's controlled group;

185 (iii) The term "controlled group" means one or more
186 chains of corporations connected through stock ownership
187 with a common parent corporation if stock possessing at least
188 fifty percent of the voting power of all classes of stock of
189 each of the corporations is owned directly or indirectly by
190 one or more of the corporations and the common parent owns
191 directly stock possessing at least fifty percent of the voting
192 power of all classes of stock of at least one of the other
193 corporations;

194 (iv) The term "corporation" means any corporation,
195 joint-stock company or association and any business
196 conducted by a trustee or trustees wherein interest or
197 ownership is evidenced by a certificate of interest or
198 ownership or similar written instrument; and

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

201 (d) *Modification for West Virginia fiduciary adjustment.*
202 – There shall be added to or subtracted from federal adjusted
203 gross income, as the case may be, the taxpayer's share, as
204 beneficiary of an estate or trust, of the West Virginia
205 fiduciary adjustment determined under section nineteen of
206 this article.

207 (e) *Partners and S corporation shareholders.* – The
208 amounts of modifications required to be made under this
209 section by a partner or an S corporation shareholder, which
210 relate to items of income, gain, loss or deduction of a
211 partnership or an S corporation, shall be determined under
212 section seventeen of this article.

213 (f) *Husband and wife.* – If husband and wife determine
214 their federal income tax on a joint return but determine their
215 West Virginia income taxes separately, they shall determine
216 their West Virginia adjusted gross incomes separately as if
217 their federal adjusted gross incomes had been determined
218 separately.

219 (g) *Effective date.* – (1) Changes in the language of this
220 section enacted in the year 2000 shall apply to taxable years
221 beginning after December 31, 2000.

222 (2) Changes in the language of this section enacted in the
223 year 2002 shall apply to taxable years beginning after
224 December 31, 2002.

225 (3) Changes in the language of this section enacted in the
226 year 2013 shall apply to taxable years beginning after
227 December 31, 2013.

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING,
LITTER.****§20-7-1. Chief natural resources police officer; natural
resources police officers; special and emergency
natural resources police officers; subsistence
allowance; expenses.**

1 (a) The division's law-enforcement policies, practices and
2 programs are under the immediate supervision and direction
3 of the division law-enforcement officer selected by the
4 director and designated as chief natural resources police
5 officer as provided in section thirteen, article one of this
6 chapter.

7 (b) Under the supervision of the director, the chief natural
8 resources police officer shall organize, develop and maintain
9 law-enforcement practices, means and methods geared, timed
10 and adjustable to seasonal, emergency and other needs and
11 requirements of the division's comprehensive natural
12 resources program. All division personnel detailed and
13 assigned to law-enforcement duties and services under this
14 section shall be known and designated as natural resources
15 police officers and are under the immediate supervision and
16 direction of the chief natural resources police officer except
17 as otherwise provided. All natural resources police officers
18 shall be trained, equipped and conditioned for duty and
19 services wherever and whenever required by division
20 law-enforcement needs.

21 (c) The chief natural resources police officer, acting
22 under supervision of the director, is authorized to select and
23 appoint emergency natural resources police officers for a
24 limited period for effective enforcement of the provisions of
25 this chapter when considered necessary because of

26 emergency or other unusual circumstances. The emergency
27 natural resources police officers shall be selected from
28 qualified civil service personnel of the division, except in
29 emergency situations and circumstances when the director
30 may designate officers, without regard to civil service
31 requirements and qualifications, to meet law-enforcement
32 needs. Emergency natural resources police officers shall
33 exercise all powers and duties prescribed in section four of
34 this article for full-time salaried natural resources police
35 officers except the provisions of subdivision (8) of said
36 section.

37 (d) The chief natural resources police officer, acting
38 under supervision of the director, is also authorized to select
39 and appoint as special natural resources police officers any
40 full-time civil service employee who is assigned to, and has
41 direct responsibility for management of, an area owned,
42 leased or under the control of the division and who has
43 satisfactorily completed a course of training established and
44 administered by the chief natural resources police officer,
45 when the action is considered necessary because of
46 law-enforcement needs. The powers and duties of a special
47 natural resources police officer, appointed under this
48 provision, is the same within his or her assigned area as
49 prescribed for full-time salaried natural resources police
50 officers. The jurisdiction of the person appointed as a special
51 natural resources police officer, under this provision, shall be
52 limited to the division area or areas to which he or she is
53 assigned and directly manages.

54 (e) The Director of the Division of Forestry is authorized
55 to appoint and revoke Division of Forestry special natural
56 resources police officers who are full-time civil service
57 personnel who have satisfactorily completed a course of
58 training as required by the Director of the Division of
59 Forestry. The jurisdiction, powers and duties of Division of
60 Forestry special natural resources police officers are set forth

61 by the Director of the Division of Forestry pursuant to article
62 three of this chapter, and articles one-a and one-b, chapter
63 nineteen of this code.

64 (f) The chief natural resources police officer, with the
65 approval of the director, has the power and authority to
66 revoke any appointment of an emergency natural resources
67 police officer or of a special natural resources police officer
68 at any time.

69 (g) Natural resources police officers are subject to
70 seasonal or other assignment and detail to duty whenever and
71 wherever required by the functions, services and needs of the
72 division.

73 (h) The chief natural resources police officer shall
74 designate the area of primary residence of each natural
75 resources police officer, including himself or herself. Since
76 the area of business activity of the division is actually
77 anywhere within the territorial confines of the State of West
78 Virginia, actual expenses incurred shall be paid whenever the
79 duties are performed outside the area of primary assignment
80 and still within the state.

81 (i) Natural resources police officers shall receive, in
82 addition to their base pay salary, a minimum monthly
83 subsistence allowance for their required telephone service,
84 dry cleaning or required uniforms and meal expenses while
85 performing their regular duties in their area of primary
86 assignment in the amount of \$130 each month. This
87 subsistence allowance does not apply to special or emergency
88 natural resources police officers appointed under this section.

89 (j) After June 30, 2010, all those full-time
90 law-enforcement officers employed by the Division of
91 Natural Resources as conservation officers shall be titled and

92 known as natural resources police officers. Wherever used in
93 this code the term "conservation officer", or its plural, means
94 "natural resources police officer", or its plural, respectively.

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.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

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

SECRETARY OF STATE

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FILED

The within *is disapproved* this the *3rd*
Day of *May*, 2013.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

APR 23 2013

Time 1:20 pm