WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED
Senate Bill No. 65
(By Senators Tucker, Miller, Sypolt and Williams)

[Passed April 12, 2013; in effect ninety days from passage.]
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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 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 June 30, 1987;

(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
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military retirement, including regular armed forces, reserve
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 $2,000 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 December 31, 1986; and the first $2,000 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 $2,000 per
person receiving retirement benefits and this limitation shall
apply to all returns or amended returns filed after December
31, 1988;

(6) Retirement income received in the form of pensions
and annuities after December 31, 1979, 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, the West Virginia Deputy Sheriff Retirement System
or the West Virginia Public Employees Retirement System if
paid to police officers retired from the Department of Natural
Resources, including those formerly classified as
conservation officers, 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 December 31,
2000, and ending prior to January 1, 2003, 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 $30,000 of military
retirement income, including retirement income from the regular armed forces, reserve and National Guard paid by the United States or by this state after December 31, 2000, 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 December 31, 2002, the first $20,000 of military retirement income, including retirement income from the regular armed forces, reserve and National Guard paid by the United States or by this state after December 31, 2002, 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 $8,000 received from any source after December 31, 1986, 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 $8,000 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 $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 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 $8,000 received from any source after December 31, 1986, 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 $8,000 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 $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 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 $2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual;

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

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

(ii) The term “reduction in force” means a net reduction in the number of employees employed by the employer in West Virginia, determined based on total West Virginia employment of the employer’s controlled group;

(iii) The term “controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations;

(iv) The term “corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument; and
(12) 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 2000 shall apply to taxable years beginning after December 31, 2000.

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

(3) Changes in the language of this section enacted in the year 2013 shall apply to taxable years beginning after 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.

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

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

(c) The chief natural resources police officer, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of
emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8) of said section.

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

(e) The Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth
by the Director of the Division of Forestry pursuant to article three of this chapter, and articles one-a and one-b, chapter nineteen of this code.

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

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

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

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

(j) After June 30, 2010, all those full-time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and
known as natural resources police officers. Wherever used in this code the term “conservation officer”, or its plural, means “natural resources police officer”, or its plural, respectively.
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 of the House of Delegates

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

Governor
PRESENTED TO THE GOVERNOR

APR. 2-3 2013

Time 1:20 pm