

# West Virginia Personal Income Tax Act

The starting point for determining West Virginia personal income tax liability of individuals, and married persons filing a joint return, is the taxpayer's federal adjusted gross income for the taxable year.

Federal adjusted gross income is then modified by making certain increasing modifications and by making certain decreasing modifications to determine West Virginia adjusted federal taxable income.

## Part 1. Modifications Increasing Federal Adjusted Gross Income

There is added to federal adjusted gross income, unless already included therein, the amounts of the following items:

### **(1) Interest income paid by a government entity other than a federal entity**

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. [W. Va. Code § 11-21-12\(b\)\(1\)](#).

### **(2) Taxable Federal government interest income**

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. [W. Va. Code § 11-21-12\(b\)\(2\)](#).

### **(3) Any federal decreasing modification not allowed for West Virginia Personal Income Tax purposes**

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 the West Virginia Personal Income Tax for the taxable year. [W. Va. Code § 11-21-12\(b\)\(3\)](#).

### **(4) Interest paid to carry tax exempt obligations**

Interest on indebtedness incurred or continued to purchase or carry obligations or securities, the income from which is exempt from tax under the West Virginia Personal Income Tax, to the extent deductible in determining federal adjusted gross income. [W. Va. Code § 11-21-12\(b\)\(4\)](#).

### **(5) Interest excluded under IRC § 128**

Interest on depository institution tax exempt savings certificates to the extent allowed as an exclusion from federal gross income under IRC § 128 for the taxable year. [W. Va. Code § 11-21-12\(b\)\(5\)](#).

### **(6) Lump-sum pension distributions**

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. [W. Va. Code § 11-21-12\(b\)\(6\)](#).

### **(7) Misuse of medical savings account funds**

Amounts withdrawn from a medical savings account established by or for an individual under [Section 33-15-20](#) or [Section 33-15-16](#) of the West Virginia Code that are used for a purpose other than payment of "medical expenses," as defined in those sections. [W. Va. Code § 11-21-12\(b\)\(7\)](#).

### **(8) Misuse of 529 college savings funds**

Unless already included in federal adjusted gross income for the taxable year, there shall be added to federal adjusted gross income any amount previously deducted from federal adjusted gross income under [Section 11-21-12a](#) for amounts deposited into a prepaid tuition contract or other college savings plan administered by the board of trustees of the college prepaid tuition and savings program, pursuant to [Article 30, Chapter 18](#) of the Code, and subsequently withdrawn from the prepaid tuition contract or other college savings plan, and used for purposes other than those qualified expenses authorized by I.R.C. §529. [W. Va. Code § 11-21-12\(f\)](#).

#### **(9) IRC § 199 domestic manufacturing deduction modification**

Unless already included in federal adjusted gross income for the taxable year, there shall be added to federal taxable income the amount deducted under IRC § 199, when determining federal adjusted gross income for the taxable year for federal income tax purposes. [Section 11-21-12g\(a\)](#).

#### **(10) Distributive share add-back for IRC § 199 deduction**

When taxpayer's federal adjusted gross income includes distributive share of income, gain or loss of a partnership, limited liability company, electing small business corporation, or other entity treated as a partnership for federal income tax purposes, and when taxpayer's distributive share for the taxable year includes a deduction, or portion of a deduction computed under IRC § 199 for the taxable year, then in addition to amounts added to federal adjusted gross income, unless already included therein, the amount computed under IRC § 199 that flows through to the taxpayer for federal income tax purposes for the taxable year shall be added to federal adjusted gross income.

Taxpayer must file with the annual [West Virginia Personal Income Tax Return](#), a copy of all schedules K-1 received showing allocation of a Section 199 deduction and such other information as the Tax Commissioner may require.

## **Part 2: Modifications Reducing Federal Adjusted Gross Income**

There is subtracted from federal adjusted gross income the following amounts, to the extent included in federal adjusted gross income:

#### **(1) Federal interest income**

Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes that is exempt from state taxation. [W. Va. Code § 11-21-12\(c\)\(1\)](#).

#### **(2) Interest paid by certain government entities**

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 IRC § 852. [W. Va. Code § 11-21-12\(c\)\(2\)](#).

#### **(3) Federal adjusted gross income that is not adjusted gross income for West Virginia personal income tax purposes**

The 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 the West Virginia Personal Income Tax for the taxable year. [W. Va. Code § 11-21-12\(c\)\(3\)](#).

#### **(4) Income tax refunds or credits**

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. [W. Va. Code § 11-21-12\(c\)\(4\)](#).

#### **(5) Certain West Virginia employee retirement benefits**

The first \$2,000 of annuities, retirement allowances, returns of contributions and any other benefit, including survivorship benefits, received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes. [W. Va. Code § 11-21-12\(c\)\(5\)](#).

#### **(6) Certain Federal government retirement benefits**

The first \$2,000 of benefits received under any federal retirement system to which 4 U.S.C. §111 applies. [W. Va. Code § 11-21-12\(c\)\(5\)](#).

#### **(7) Certain retirement benefits received under a defined pension plan that prematurely terminates**

Any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan.

However, if the Tax Commissioner determines that this adjustment reduces the revenues of the State by \$2 million or more in any one year, then the Tax Commissioner is required to reduce the percentage of the reduction to a level at which the Commissioner believes will reduce the cost of the adjustment to \$2 million for the next year. This adjustment is effective for tax years beginning on January 1, 2020, and terminates for taxable years on and after January 1, 2023, unless the Legislature extends this decreasing modification. [W. Va. Code § 11-21-12\(d\)](#).

#### **(8) Certain West Virginia municipal police and firemen retiree benefits**

Retirement income received in the form of pensions and annuities under any West Virginia municipal police retirement system, West Virginia municipal 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. [W. Va. Code § 11-21-12\(c\)\(6\)](#).

In general, West Virginia municipal police and firemen participate in the West Virginia Public Employees Retirement System and their retirement benefits are treated under [paragraph \(5\)](#), above.

Prior to creation of the West Virginia Public Employees Retirement System in 1961, a number of West Virginia municipalities created pension plans for policemen and firemen employee by the municipality. Retirees from these separate retirement plans are not eligible for the decreasing modification discussed in [paragraph \(5\)](#) of this part.

#### **(9) Military retirement benefits**

For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year [W. Va. Code § 11-21-12\(c\)\(7\)](#).

#### **(10) Social Security Income Decreasing Modification**

(A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et. seq., included in federal adjusted gross income for the taxable year is allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code. [W. Va. Code § 11-21-12\(c\)\(8\)](#).

(B) For taxable years beginning on or after January 1, 2021, 65 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et. seq., included in federal adjusted gross income for the taxable year is allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code. [W. Va. Code § 11-21-12\(c\)\(8\)](#).

(C) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et. seq., included in federal adjusted gross income for the taxable year is allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code. [W. Va. Code § 11-21-12\(c\)\(8\)](#).

(D) Exception. The deductions allowed by Paragraphs (A), (B) and (C), above are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return. [W. Va. Code § 11-21-12\(c\)\(8\)](#).

#### **(11) Persons age 65 or older or permanently disabled**

Federal adjusted gross income in the amount of \$8,000 received from any source by any person who has attained the age of 65 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.

However –

(i) Where the total modification under paragraphs (1), (2), (5), (6), (7), and (8) of this part is \$8,000 per person or more, no deduction shall be allowed under this paragraph (9); and

(ii) Where the total modification under paragraphs (1), (2), (5), (6), (7) and (8) of this part is less than \$8,000 per person, the total modification allowed under this paragraph (9) for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of modifications under paragraphs (1), (2), (5), (6), (7) and (8) of this part. [W. Va. Code § 11-21-12\(c\)\(9\)](#).

#### **(12) Surviving spouse of persons age 65 or older or permanently or totally disabled**

Federal adjusted gross income in the amount of \$8,000 received from any source by the surviving spouse of any person who had attained the age of 65 or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes.

However –

(i) Where the total modification under paragraphs (1), (2), (5), (6), (7), (8) and (9) of this part is \$8,000 or more, no deduction is allowed under this paragraph (10); and

(ii) Where the total modification under paragraphs (1), (2), (5), (6), (7), (8) and (9) of this part is less than \$8,000 per person, the total modification allowed under this paragraph (10) for all gross income received by that person is limited to the difference between \$8,000 and the sum of paragraphs (1), (2), (5), (6), (7), (8) and (9) of this part. [W. Va. Code § 11-21-12\(c\)\(10\)](#).

#### **(13) Contributions to medical savings account**

The first \$2,000 of contributions from any source to a medical savings account established by or for the individual pursuant to [Section 33-15-20](#) of the Code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes is an allowable deduction from federal adjusted gross income.

For married individuals filing a joint return, the maximum deduction under this paragraph (11) is computed separately for each individual. [W. Va. Code § 11-21-12\(c\)\(11\)](#)

#### **(14) Other income State is prohibited from taxing**

The amount of any other income which this state is prohibited from taxing under the laws of the United States, to the extent included in federal adjusted gross income, is an allowable deduction from federal adjusted gross income. [W. Va. Code § 11-21-12\(c\)\(12\)](#).

#### **(15) Modification for West Virginia fiduciary adjustment**

There is 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 11-21-19](#) of the Code. [W. Va. Code § 11-21-12\(d\)](#).

#### **(16) 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 11-21-17](#) of the Code. [W. Va. Code § 11-21-12\(e\)](#).

#### **(17) 529 College savings plan payments**

The amount of any payment made under a prepaid tuition contract or other college savings plan administered by the board, Board of Trustees of the College Prepaid Tuition and Savings Program established in [Article 30, Chapter 18](#) of the Code, is allowed as a decreasing modification to federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made.

The taxpayer may also elect to carry forward this modification over a period not to exceed four five taxable years after the taxable year in which the payment was made. [W. Va. Code § 11-21-12\(a\)](#).

#### **(18) Long-term care insurance premiums**

The amount of any payment during the taxable year for premiums for a long-term care insurance policy, as defined in [Section 33-15A-4](#) of the Code, that offers coverage to either the taxpayer, the taxpayer's spouse, parent or a dependent as defined IRC § 152, as amended, is allowed as a decreasing modification to federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. [W. Va. Code § 11-21-12\(c\)](#).

#### **(19) Certain pay for active-duty service pursuant to Executive Order**

Active-duty military pay received for the period of time an individual is on active duty as a member of the National Guard or armed forces reserve called to active duty pursuant to an Executive Order of the President of the United States for domestic security duty is an authorized modification reducing federal adjusted gross income, but only to the extent the active-duty military pay is included in federal adjusted gross income for the taxable year in which it is received. [W. Va. Code § 11-21-12e\(a\)](#).

#### **(20) Certain active-duty pay in year of separation from active military service**

The amount of active-duty military pay received by a resident individual who is on active duty for thirty continuous days or more in the armed forces of the United States, the National Guard or armed forces reserve is allowed a modification reducing federal adjusted gross income for the taxable year in which the individual has separated from active military service, but only to the extent the active-duty military pay is included in federal adjusted gross income for the taxable year in which it is received. [W. Va. Code § 11-21-12e\(b\)](#).

#### **(21) Qualified WV turnpike tolls**

Any payment during the taxable year for amounts expended by an individual for tolls paid electronically through use of a West Virginia Parkways, Economic Development and Tourism Authority PAC card (parkways authority commuter card) account for noncommercial commuter passes for travel on toll roads in West Virginia, not including amounts paid as refundable transponder deposits or amounts reimbursed by an employer or otherwise, is allowable as a decreasing modification to federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made.

In the case of a single person, a head of household or a married couple filing a joint return, or a married person filing a separate return, this authorized modification reducing federal adjusted gross income applies only to the portion of the expended amount that equals or exceeds \$25 and the total amount deducted for a taxable year may not exceed \$1,000.

The amount of any qualified tolls paid and eligible for this decreasing modification and not used in the taxable year when paid may be carried forward for up to three taxable years after the taxable year in which the tolls were paid. Qualified toll payments not used by the end of the carry forward period are forfeited. [W. Va. Code § 11-21-12\(h\)](#).

#### **(22) Contributions to qualified trust for child with autism**

A decreasing modification to federal adjusted gross income is allow for qualifying contributions to a qualified trust maintained for the benefit of a child with autism.

This deduction may not exceed \$1,000 per year for individual filers and persons who are married but filing separately, and \$2,000 per year for persons who are married and filing a joint return.

This deduction is allowable only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. [W. Va. Code § 11-21-12\(i\)](#).