

# **WEST VIRGINIA LEGISLATURE**

**FIRST REGULAR SESSION, 2011**



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

**House Bill No. 2949**

(By Delegates White and T. Campbell)



Passed March 10, 2011

In Effect Ninety Days From Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2949**

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(BY DELEGATES WHITE AND T. CAMPBELL)

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[Passed March 10, 2011; in effect ninety days from passage.]

AN ACT to repeal §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5, §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and §11-6I-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-21-21, §11-21-23, and §11-21-24 of said code, all relating to providing property tax relief to taxpayers generally; providing definitions of “low income” for purposes of property tax relief programs; allowing only “low income” taxpayers to receive the tax credit benefits of property tax relief programs; allowing those eligible for the homestead exemption to take both the senior citizens’ tax credit for property tax paid on the first \$20,000 of taxable assessed value of a homestead and the refundable tax credit for real property taxes paid in excess of four percent of gross household income; repealing the Senior Citizen Property Tax Payment Deferment

Act; and eliminating the alternative low income property tax increment refundable credit program.

*Be it enacted by the Legislature of West Virginia:*

That §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5, §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10, and §11-6I-11 of the code of West Virginia, 1931, as amended, be repealed; and that §11-21-21, §11-21-23, and §11-21-24 of said code be amended and reenacted, all to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-21. Senior citizens' tax credit for property tax paid on first \$20,000 of taxable assessed value of a homestead in this state.**

1 (a) *Allowance of credit.* --

2 (1) A low-income person who is allowed a \$20,000  
3 homestead exemption from the assessed value of his or her  
4 homestead for ad valorem property tax purposes, as provided  
5 in section three, article six-b of this chapter, shall be allowed  
6 a refundable credit against the taxes imposed by this article  
7 equal to the amount of ad valorem property taxes paid on up  
8 to the first \$10,000 of taxable assessed value of the  
9 homestead for property tax years that begin on or after  
10 January 1, 2003, except as provided in subdivision (2) of this  
11 subsection.

12 (2) For tax years beginning on or after January 1, 2007,  
13 a low-income person who is allowed a \$20,000 homestead  
14 exemption from the assessed value of his or her homestead  
15 for ad valorem property tax purposes, as provided in section  
16 three, article six-b of this chapter, shall be allowed a  
17 refundable credit against the taxes imposed by this article

18 equal to the amount of ad valorem property taxes paid on up  
19 to the first \$20,000 of taxable assessed value of the  
20 homestead for property tax years that begin on or after  
21 January 1, 2007: *Provided*, That for tax years beginning on  
22 and after January 1, 2009, any person who is required to pay  
23 the federal alternative minimum income tax in the current tax  
24 year is disqualified from receiving any tax credit provided  
25 under this section.

26 (3) Due to the administrative cost of processing, the  
27 refundable credit authorized by this section may not be  
28 refunded if less than \$10.

29 (4) The credit for each property tax year shall be claimed  
30 by filing a claim for refund within three years after the due  
31 date for the personal income tax return upon which the credit  
32 is first available.

33 (b) *Terms defined.* --

34 For purposes of this section:

35 (1) "Low income" means federal adjusted gross income  
36 for the taxable year that is one hundred fifty percent or less  
37 of the federal poverty guideline for the year in which  
38 property tax was paid, based upon the number of individuals  
39 in the family unit residing in the homestead, as determined  
40 annually by the United States Secretary of Health and Human  
41 Services.

42 (2) (A) For tax years beginning before January 1, 2007,  
43 "taxes paid" means the aggregate of regular levies, excess  
44 levies and bond levies extended against not more than  
45 \$10,000 of the taxable assessed value of a homestead that are  
46 paid during the calendar year determined after application of  
47 any discount for early payment of taxes but before

48 application of any penalty or interest for late payment of  
49 property taxes for a property tax year that begins on or after  
50 January 1, 2003, except as provided in paragraph (B) of this  
51 subdivision.

52 (B) For tax years beginning on or after January 1, 2007,  
53 “taxes paid” means the aggregate of regular levies, excess  
54 levies and bond levies extended against not more than  
55 \$20,000 of the taxable assessed value of a homestead that are  
56 paid during the calendar year determined after application of  
57 any discount for early payment of taxes but before  
58 application of any penalty or interest for late payment of  
59 property taxes for a property tax year that begins on or after  
60 January 1, 2007.

61 (c) *Legislative rule.* --

62 The Tax Commissioner shall propose a legislative rule  
63 for promulgation as provided in article three, chapter  
64 twenty-nine-a of this code to explain and implement this  
65 section.

66 (d) *Confidentiality.* --

67 The Tax Commissioner shall utilize property tax  
68 information in the statewide electronic data processing  
69 system network to the extent necessary for the purpose of  
70 administering this section, notwithstanding any provision of  
71 this code to the contrary.

72 (e) For tax years beginning on or after January 1, 2012,  
73 taxpayers must calculate the credit authorized in this section  
74 prior to calculating the credit authorized in section  
75 twenty-three of this article.

**§11-21-23. Refundable credit for real property taxes paid in excess of four percent of gross household income.**

1 (a) For the tax years beginning on or after January 1,  
2 2008, any homeowner living in his or her homestead shall be  
3 allowed a refundable credit against the taxes imposed by this  
4 article equal to the amount of real property taxes paid in  
5 excess of four percent of gross household income: *Provided*,  
6 That for the tax years beginning on or after January 1, 2012,  
7 any low income homeowner living in his or her homestead in  
8 this state shall be allowed a refundable credit against the  
9 taxes imposed by this article equal to the amount by which  
10 the difference between West Virginia real property taxes paid  
11 for the tax year, minus the amount of credit authorized in  
12 section twenty-one of this article, exceeds four percent of the  
13 taxpayer's gross household income for the tax year, as  
14 determined for purposes of this article. If the refundable  
15 credit provided in this section exceeds the amount of taxes  
16 imposed by this article, the state Tax Department shall refund  
17 that amount to the homeowner.

18 (b) Due to the administrative cost of processing, the  
19 refundable credit authorized by this section may not be  
20 refunded if less than \$10.

21 (c) The credit for each property tax year shall be claimed  
22 by filing a claim for refund within twelve months after the  
23 real property taxes are paid on the homestead.

24 (d) For the purposes of this section:

25 (1) "Gross household income" is defined as federal  
26 adjusted gross income plus the sum of the following:

27 (A) Modifications in subsection (b), section twelve of this  
28 article increasing federal adjusted gross income;

29 (B) Federal tax-exempt interest reported on federal tax  
30 return;

31 (C) Workers' compensation and loss of earnings  
32 insurance; and

33 (D) Nontaxable Social Security benefits; and

34 (2) For the tax years beginning before January 1, 2008,  
35 "real property taxes paid" means the aggregate of regular  
36 levies, excess levies and bond levies extended against the  
37 homestead that are paid during the calendar year and  
38 determined after any application of any discount for early  
39 payment of taxes but before application of any penalty or  
40 interest for late payment of property taxes for property tax  
41 years that begin on or after January 1, 2008.

42 (e) A homeowner is eligible to benefit from this section  
43 or section twenty-one of this article, whichever section  
44 provides the most benefit as determined by the homeowner.  
45 No homeowner may receive benefits under both this section  
46 and section twenty-one of this article during the same taxable  
47 year: *Provided*, That for tax years beginning on or after  
48 January 1, 2012, a homeowner may take the credit provided  
49 in this section in addition to the credit provided in section  
50 twenty-one of this article, to be calculated as provided in  
51 subsection (a) of this section. For tax years beginning on and  
52 after January 1, 2009, any person who is required to pay the  
53 federal alternative minimum income tax in the current tax  
54 year is disqualified from receiving any tax credit provided  
55 under this section. Nothing in this section denies those  
56 entitled to the homestead exemption provided in section  
57 three, article six-b of this chapter.

58 (f) No homeowner may receive a refundable tax credit  
59 imposed by this article in excess of \$1,000. This amount shall

60 be reviewed annually by the Legislature to determine if an  
61 adjustment is necessary.

62 (g) For tax years commencing on or after January 1,  
63 2012, no credit may be taken under this section for any  
64 homestead which is owned, in whole or in part, by any  
65 person who is not a low income person.

66 (h) *Terms defined.* -- For purposes of this section:

67 (1) The definitions set forth in section twenty-four of this  
68 article apply for purposes of this section.

69 (2) "Low income" means federal adjusted gross income  
70 for the tax year that is three hundred percent or less of the  
71 federal poverty guideline for the year in which property tax  
72 was paid, based upon the number of individuals in the family  
73 unit residing in the homestead, as determined annually by the  
74 United States Secretary of Health and Human Services.

75 (3) A "low income person" means a person whose federal  
76 adjusted gross income for the tax year meets the definition of  
77 "low income" as defined in this subsection.

**§11-21-24. Senior citizen property tax relief credit for tax years  
beginning before 2012.**

1 (a) *Definitions.* -- As used in this section, the following  
2 terms shall have the meaning ascribed to them in this  
3 subsection, unless the context in which the term is used  
4 clearly requires a different meaning or a specific different  
5 definition is provided:

6 (1) "Assessed value" means the value of property as  
7 determined under article three of this chapter.

8 (2) “Real property taxes paid” means, for the tax years  
9 beginning on or after January 1, 2009, the aggregate of  
10 regular levies, excess levies and bond levies extended against  
11 the homestead that are paid during the calendar year and  
12 determined after any application of any discount for early  
13 payment of taxes but before application of any penalty or  
14 interest for late payment of property taxes.

15 (3) “Senior citizen property tax relief tax credit” means  
16 the tax credit authorized under this section.

17 (4) “Gross household income” means gross household  
18 income as defined in section twenty-three of this article.

19 (5) “Homestead” means a homestead qualified for the  
20 homestead property tax exemption authorized in article six-b  
21 of this chapter, but limited to a single-family residential  
22 house, including a mobile or manufactured or modular home,  
23 and the land, not exceeding one acre, surrounding such  
24 structure that is owned by the owner of the single-family  
25 residential house, including a mobile or manufactured or  
26 modular home; or a mobile or manufactured or modular  
27 home regardless of whether the land upon which such mobile  
28 or manufactured or modular home is situated is owned by  
29 another.

30 (6) “Owner” or “homeowner” means the person who is  
31 possessed of the homestead, whether in fee or for life. A  
32 person seized or entitled in fee subject to a mortgage or deed  
33 of trust shall be considered the owner. A person who has an  
34 equitable estate of freehold, or is a purchaser of a freehold  
35 estate who is in possession before transfer of legal title shall  
36 also be considered the owner. Personal property mortgaged  
37 or pledged shall, for the purpose of taxation, be considered  
38 the property of the party in possession.

39 (7) "Sixty-five years of age or older" includes a person  
40 who attains the age of sixty-five on or before June 30  
41 following the July 1 assessment day.

42 (8) "Tax increment" means the increase of ad valorem  
43 taxes assessed on the homestead, determined as the  
44 difference between the ad valorem taxes assessed on the  
45 homestead for the current tax year and the ad valorem taxes  
46 assessed on the homestead for the tax year immediately  
47 preceding the tax year for which the taxpayer's application  
48 for tax credit specified in this section is approved by the  
49 assessor, or otherwise finally approved in accordance with  
50 the provisions of this article.

51 (9) "Tax year" means the property tax calendar year  
52 following the July 1 assessment day.

53 (10) "Used and occupied exclusively for residential  
54 purposes" means that the property is used as an abode,  
55 dwelling or habitat for more than six consecutive months of  
56 the calendar year prior to the date of application by the owner  
57 thereof; and that subsequent to making application for tax  
58 credit, the property is used only as an abode, dwelling or  
59 habitat to the exclusion of any commercial use.

60 (b) *Refundable credit.* -- Subject to the requirements and  
61 limitations of this section, for the tax years beginning on or  
62 after January 1, 2009, any homeowner having a gross  
63 household income equal to or less than \$25,000 for the tax  
64 year, living in his or her homestead shall be allowed a  
65 refundable credit against the taxes imposed by this article  
66 equal to the amount of real property taxes paid that are  
67 attributable to the tax increment of ad valorem taxes assessed  
68 under the authority of article three of this chapter on the  
69 homestead: *Provided*, That the gross household income shall  
70 be adjusted annually in accordance with the consumer price

71 index. The credit shall be applied against the personal income  
72 tax in the personal income tax year of the taxpayer when the  
73 property tax increment was actually paid.

74 (1) Due to the administrative cost of processing, the  
75 refundable credit authorized by this section may not be  
76 refunded if less than \$10.

77 (2) The credit for each property tax year shall be claimed  
78 by filing a claim for refund within twelve months after the  
79 real property taxes are paid on the homestead.

80 (3) Notwithstanding the provisions of section twenty-one  
81 or section twenty-three of this article, for property tax years  
82 that begin on or after January 1, 2009, a homeowner is  
83 eligible to benefit from this section, section twenty-one or  
84 twenty-three of this article, whichever section provides the  
85 most benefit as determined by the homeowner. No  
86 homeowner may receive benefits under this section, section  
87 twenty-one or twenty-three of this article during the same  
88 taxable year. Nothing in this section shall be interpreted to  
89 deny any lawfully entitled taxpayer of the homestead  
90 exemption provided in section three, article six-b of this  
91 chapter.

92 (4) No tax credit shall be allowed under this section for  
93 tax years beginning on or after January 1, 2012: *Provided,*  
94 That the definitions set forth in this section shall continue to  
95 apply for purposes of section twenty-three of this article.

96 (c) *Qualification for credit.* --

97 (1) The following homesteads shall qualify for the tax  
98 credit provided in this section:

99 (A) Any homestead owned by an owner sixty-five years  
100 of age or older and used and occupied exclusively for  
101 residential purposes by such owner; and

102 (B) Any homestead that:

103 (i) Is owned by an owner sixty-five years of age or older  
104 who, as a result of illness, accident or infirmity, is residing  
105 with a family member or is a resident of a nursing home,  
106 personal care home, rehabilitation center or similar facility;

107 (ii) Was most recently used and occupied exclusively for  
108 residential purposes by the owner or the owner's spouse; and

109 (iii) Has been retained by the owner for noncommercial  
110 purposes.

111 (2) (A) For tax years commencing on or after January 1,  
112 2009, the owner of a homestead meeting the qualifications set  
113 forth in subdivision (1) of this subsection may apply for a tax  
114 credit in the amount of the tax increment of ad valorem taxes  
115 assessed under the authority of article three of this chapter on  
116 the homestead, subject to the limitations set forth in this  
117 section: *Provided*, That the tax credit may be authorized only  
118 when the tax increment is the greater of \$300 or ten percent  
119 or more.

120 (B) In lieu of the tax credit authorized under this section,  
121 a taxpayer entitled to such credit may elect to instead apply  
122 the deferment of the tax increment authorized pursuant to  
123 article six-h of this chapter. Any taxpayer making such  
124 election shall be fully subject to the terms and limitations set  
125 forth in article six-h of this chapter.

126 (d) *Application for tax credit; renewals; waiver of tax*  
127 *credit. --*

128 (1) *General.* -- No tax credit may be allowed under this  
129 section unless an application for tax credit is filed with the  
130 assessor of the county in which the homestead is located, on  
131 or before November 1 following mailing of the tax ticket in  
132 which the tax increment that is the subject of the application  
133 is contained, such tax ticket being mailed pursuant to section  
134 eight, article one, chapter eleven-a of this code. In the case of  
135 sickness, absence or other disability of the owner, the  
136 application may be filed by the owner or his or her duly  
137 authorized agent.

138 (2) *Renewals.* -- After the owner has filed an application for  
139 tax credit with his or her assessor, there shall be no need for that  
140 owner to refile an application for the tax credit. However, the  
141 taxpayer shall in all cases be required to file a personal income  
142 tax return in order to claim the credit in any tax year.

143 (e) *Determination; notice of denial of application for tax*  
144 *credit.* --

145 (1) The assessor shall, as soon as practicable after an  
146 application for tax credit is filed, review that application and  
147 either approve or deny it. If the application is denied, the  
148 assessor shall promptly, but not later than January 1, serve  
149 the owner with written notice explaining why the application  
150 was denied and furnish a form for filing with the county  
151 commission, should the owner desire to take an appeal. The  
152 notice required or authorized by this section shall be served  
153 on the owner or his or her authorized representative either by  
154 personal service or by certified mail. The assessor shall  
155 approve or disapprove an application for tax credit within  
156 thirty days of receipt. Any application not approved or denied  
157 within thirty days is deemed approved.

158 (2) In the event that the assessor has information  
159 sufficient to form a reasonable belief that an owner, after

160 having been originally granted a tax credit, is no longer  
161 eligible for the tax credit, he or she shall, within thirty days  
162 after forming this reasonable belief, revoke the tax credit and  
163 serve the owner with written notice explaining the reasons for  
164 the revocation and furnish a form for filing with the county  
165 commission should the owner desire to take an appeal.

166 (f) *Appeals procedure.* --

167 (1) *Notice of appeal; thirty days.* -- Any owner aggrieved  
168 by the denial of his or her claim for application for tax credit  
169 or the revocation of a previously approved tax credit may  
170 appeal to the county commission of the county within which  
171 the property is situated. All such appeals shall be filed within  
172 thirty days after the owner's receipt of written notice of the  
173 denial of an application or the revocation of a previously  
174 approved tax credit, as applicable, pursuant to subsection (e)  
175 of this section.

176 (2) *Review; determination; appeal.* -- The county  
177 commission shall complete its review and issue its  
178 determination as soon as practicable after receipt of the  
179 notice of appeal, but in no event later than February 28  
180 following the tax year for which the tax credit was sought. In  
181 conducting its review, the county commission may hold a  
182 hearing on the application. The assessor or the owner may  
183 apply to the circuit court of the county for review of the  
184 determination of the county commission in the same manner  
185 as is provided for appeals from the county commission in  
186 section twenty-five, article three of this chapter.

187 (g) *Termination of tax credit.* --

188 (1) Any tax credit approved in accordance with the  
189 provisions of this section shall terminate immediately when  
190 any of the following events occur:

191 (A) The death of the owner of the property for which the  
192 tax credit was authorized;

193 (B) The sale of the property for which the tax credit was  
194 approved; or

195 (C) A determination by the assessor that the property for  
196 which the tax credit was approved no longer qualifies for the  
197 tax credit in accordance with the provisions of this section.

198 (h) *Forms, instructions and regulations.* -- The Tax  
199 Commissioner shall prescribe and supply all necessary  
200 instructions and forms for administration of this section.  
201 Additionally, the Tax Commissioner may propose rules for  
202 legislative approval in accordance with the provisions of  
203 article three, chapter twenty-nine-a of this code as the Tax  
204 Commissioner considers necessary for the implementation of  
205 this section.

206 (i) *Criminal penalties; restitution.* --

207 (1) *False or fraudulent claim for tax credit.* -- Any owner  
208 who willfully files a fraudulent application for tax credit and  
209 any person who knowingly assisted in the preparation or  
210 filing of such fraudulent application for tax credit or who  
211 knowingly supplied information upon which the fraudulent  
212 application for tax credit was prepared or allowed is guilty of  
213 a misdemeanor and, upon conviction thereof, shall be fined  
214 not less than \$250 nor more than \$500, or imprisoned in jail  
215 for not more than one year, or both fined and imprisoned.

216 (2) In addition to the criminal penalties provided above,  
217 upon conviction of any of the above offenses, the court shall  
218 order that the defendant make restitution unto this state for all  
219 taxes not paid due to an improper tax credit, or continuation  
220 of a tax credit, for the owner and interest thereon at the legal  
221 rate until paid.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

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*Governor*