WEST VIRGINIA CODE: §11-21-24

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

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

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

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

(3) "Senior citizen property tax relief tax credit" means the tax credit authorized under this section.

(4) "Gross household income" means gross household income as defined in section twenty-three of this article.

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

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

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

(8) "Tax increment" means the increase of ad valorem taxes assessed on the homestead, determined as the difference between the ad valorem taxes assessed on the homestead for

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the current tax year and the ad valorem taxes assessed on the homestead for the tax year immediately preceding the tax year for which the taxpayer's application for tax credit specified in this section is approved by the assessor, or otherwise finally approved in accordance with the provisions of this article.

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

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

(b) Refundable credit. -- Subject to the requirements and limitations of this section, for the tax years beginning on or after January 1, 2009, any homeowner having a gross household income equal to or less than $25,000 for the tax year, living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid that are attributable to the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead: Provided, That the gross household income shall be adjusted annually in accordance with the consumer price index. The credit shall be applied against the personal income tax in the personal income tax year of the taxpayer when the property tax increment was actually paid.

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

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

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

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

(c) Qualification for credit. --

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

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

(B) Any homestead that:

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

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

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

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

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

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

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

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

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

(1) The assessor shall, as soon as practicable after an application for tax credit is filed, review that application and either approve or deny it. If the application is denied, the assessor shall promptly, but not later than January 1, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county

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commission, should the owner desire to take an appeal. The notice required or authorized by this section shall be served on the owner or his or her authorized representative either by personal service or by certified mail. The assessor shall approve or disapprove an application for tax credit within thirty days of receipt. Any application not approved or denied within thirty days is deemed approved.

(2) In the event that the assessor has information sufficient to form a reasonable belief that an owner, after having been originally granted a tax credit, is no longer eligible for the tax credit, he or she shall, within thirty days after forming this reasonable belief, revoke the tax credit and serve the owner with written notice explaining the reasons for the revocation and furnish a form for filing with the county commission should the owner desire to take an appeal.

(f) Appeals procedure. --

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

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

(g) Termination of tax credit. --

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

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

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

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

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

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necessary for the implementation of this section.

(i) Criminal penalties; restitution. --

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

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

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