WEST VIRGINIA CODE CHAPTER 11 ARTICLE 6B

WV Legislature

§11-6B-1. Purpose.

This article is enacted to implement the amendment to article X, section one-b of the Constitution increasing the ad valorem property tax homestead exemption, which was ratified by the people at the general election held on November 4, 1980.

WV Legislature

§11-6B-2. Definitions.

For purposes of this article, the term:

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

(2) "Claimant" means a person who is age sixty-five or older or who is certified as being permanently and totally disabled, and who owns a homestead that is used and occupied by the owner thereof exclusively for residential purposes: Provided, That: (1) If the property was most recently used and occupied by the owner or the owner's spouse thereof exclusively for residential purposes; (2)the owner, 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; and (3) the property is retained by the owner for noncommercial purposes, then the owner of that property may continue to claim a homestead property tax exemption on the property.

(3) "Family member" means a person who is related by common ancestry, adoption or marriage including, but not limited to, persons related by lineal and collateral consanguinity.

(4) "Homestead" means a single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; 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 or leased.

(5) "Owner" 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.

(6) "Permanently and totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(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 first assessment day.

(8) "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 the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use: Provided, That failure to satisfy this six-month period shall not prevent allowance of a homestead exemption to a

WVLegislature

former resident in accordance with section three of this article.

(9) "Tax year" means the calendar year following the July first assessment day.

(10) "Resident of this state" means an individual who is domiciled in this state for more than six months of the calendar year.

WV Legislature

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

(a) General. -- An exemption from ad valorem property taxes shall be allowed for the first $20,000 of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled provided the owner has been or will be a resident of the State of West Virginia for the two consecutive calendar years preceding the tax year to which the homestead exemption relates: Provided, That an owner who receives a similar exemption for a homestead in another state is ineligible for the exemption provided by this section. The owner's application for exemption shall be accompanied by a sworn affidavit stating that such owner is not receiving a similar exemption in another state: Provided, however, That when a resident of West Virginia establishes residency in another state or country and subsequently returns and reestablishes residency in West Virginia within a period of five years, such resident may be allowed a homestead exemption without satisfying the requirement of two years consecutive residency if such person was a resident of this state for two calendar years out of the ten calendar years immediately preceding the tax year for which the homestead exemption is sought. Proof of residency includes, but is not limited to, the owner's voter's registration card issued in this state or a motor vehicle registration card issued in this state. Additionally, when a person is a resident of this state at the time such person enters upon active duty in the military service of this country and throughout such service maintains this state as his or her state of residence, and upon retirement from the military service, or earlier separation due to a permanent and total physical or mental disability, such person returns to this state and purchases a homestead, such person is deemed to satisfy the residency test required by this section and shall be allowed a homestead exemption under this section if such person is otherwise eligible for a homestead exemption under this article; and the Tax Commissioner may specify, by regulation promulgated under chapter twenty-nine-a of this code, what constitutes acceptable proof of these facts. Only one exemption shall be allowed for each homestead used and occupied exclusively for residential purposes by the owner thereof, regardless of the number of qualified owners residing therein.

(b) Attachment of exemption. -- This exemption shall attach to the homestead occupied by the qualified owner on the July first assessment date and shall be applicable to taxes for the following tax year. An exemption shall not be transferred to another homestead until the following July first. If the homestead of an owner qualified under this article is transferred by deed, will or otherwise, the $20,000 exemption shall be removed from the property on the next July first assessment date unless the new owner qualifies for the exemption.

(c) Construction. -- The residency requirement specified in subsection (a) is enacted pursuant to the Legislature's authority to prescribe by general law requirements, limitations and conditions for the homestead exemption, as set forth in section one-b, article ten of the Constitution of this state. Should the Supreme Court of Appeals or a federal court of competent jurisdiction determine that this residency requirement violates federal law in a decision that becomes final, this section shall then be construed and applied, beginning with the July first assessment day immediately following the date the decision became final, as if

the residency requirement had not been enacted, thereby preserving the availability of the homestead exemption and the fiscal integrity of local government levying bodies.

WV Legislature

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

(a) General. -- No exemption shall be allowed under this article unless a claim of exemption is filed with the assessor of the county in which the homestead is located, on or before December 1, following the July first assessment day. In the case of sickness, absence or other disability of the claimant, the claim may be filed by the claimant or his or her duly authorized agent.

(b) Claims for disability exemption. -- Each claim for exemption based on the owner being permanently and totally disabled shall include one of the following forms of documentation in support of said claim: (1) A written certification by a doctor of medicine or doctor of osteopathy licensed to practice their particular profession in this state that the claimant is permanently and totally disabled; (2) a written certification by the social security administration that the claimant is currently receiving benefits for permanent and total disability; (3) a copy of the letter from the social security administration originally awarding benefits to the claimant for permanent and total disability and a copy of a current check for such benefits, marked void; (4) a current social security health insurance (Medicare) card in the name of the claimant and a copy of a current check to the claimant, marked void, for benefits from the social security administration for permanent and total disability; (5) a written certification signed by the veterans administration certifying that a person is totally and permanently disabled; (6) any lawfully recognized workers' compensation documentation certifying that a person is totally and permanently disabled; (7) any lawfully recognized pneumoconiosis documentation certifying that a person is totally and permanently disabled; or (8) any other lawfully recognized documentation certifying that a person is totally and permanently disabled.

(c) Renewals. --

(1) Senior citizens. -- If the claimant is age sixty-five or older, then after the claimant has filed for the exemption once with his or her assessor, there shall be no need for that claimant to refile unless the claimant moves to a new homestead.

(2) Disabled. -- If the claimant is permanently and totally disabled, then after the claimant has filed for the exemption once with his or her assessor, and signed a statement certifying that he or she will notify the assessor if he or she is no longer eligible for an exemption on the basis of being permanently and totally disabled and that the claimant will notify the assessor within thirty days of the discontinuance of the receipt of benefits for permanent and total disability, if the claimant originally claimed receipt of said benefits to document his or her claim for exemption, there shall be no need for that claimant to refile, unless the claimant moves to a new homestead.

(3) Waiver of exemption. -- Any person not filing his or her claim for exemption on or before December 1, shall be determined to have waived his or her right to exemption for the next tax year.

WV Legislature

(4) Residential care exception. –- For purposes of this section, an otherwise qualified claimant who, as a result of illness, accident or infirmity, resides with a family member or is a resident at a nursing home, personal care home, rehabilitation center or similar facility is not considered to have moved to a new homestead.

WV Legislature

§11-6B-5. Determination; notice of denial of claim or exemption.

(a) The assessor shall, as soon as practicable after a claim for exemption is filed, review that claim and either approve or deny it. If the exemption is denied, the assessor shall promptly, but not later than January 1, serve the claimant with written notice explaining why the exemption was denied and furnish a form for filing with the county commission should the claimant desire to take an appeal. The notice required or authorized by this section shall be served on the claimant or his or her authorized representative either by personal service or by certified mail.

(b) In the event that the assessor shall have information sufficient to form a reasonable belief that a claimant, after having been originally granted an exemption, is not eligible for said exemption, he or she shall deny the exemption on the next assessment date and shall promptly, but no later than January 1, serve the claimant with written notice explaining the reasons for the denial and furnish a form for filing with the county commission should the claimant desire to take an appeal.

WV Legislature

§11-6B-6. Appeals procedure.

(a) Notice of appeal; thirty days. -- Any claimant aggrieved by the denial of his or her claim for exemption or the subsequent denial of his or her exemption may appeal to the county commission within thirty days after receipt of written notice explaining why the exemption was denied.

(b) 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 the twenty-eighth day of February of the tax year for which the exemption is first applied. In conducting its review, the county commission may hold a hearing on the claim. The assessor or the claimant 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.

WV Legislature

§11-6B-7. Property tax books.

(a) Property book entry. -- The exemption of the first $20,000 of assessed value shall be shown on the property books as a deduction from the total assessed value of the homestead.

(b) Levy; statement to homestead owner. -- When the $20,000 exemption is greater than the total assessed value of the eligible homestead, no taxes shall be levied. The sheriff shall issue a statement to the owner showing that no taxes are due.

WV Legislature

§11-6B-8.

Repealed.

Acts, 1983 1st. Ex. Sess., Ch. 15.

WV Legislature

§11-6B-9. Forms, instructions and regulations.

The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this article. Additionally, the Tax Commissioner may make all necessary rules and regulations for this article as provided in the state administrative procedure act in chapter twenty-nine-a of this code.

WV Legislature

§11-6B-10. Criminal penalties; restitution.

(a) False or fraudulent claim for exemption. -- Any claimant who willfully files a fraudulent claim for exemption, and any person who knowingly assisted in the preparation or filing of such fraudulent claim for exemption or who knowingly supplied information upon which the fraudulent claim was prepared or allowed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $150, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

(b) Fraudulent assessments. -- (1) An assessor or employee of a county who, with intent to defraud the state, assesses the value of the eligible claimant's homestead for an amount which is in excess of its true and actual value or is in excess of the assessed value of similar property in his county, in order to increase the cost of the homestead exemption to his county and to thereby secure a larger reimbursement from the state, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Each violation of this subsection shall constitute a separate offense.

(2) An assessor or employee of a county who, with intent to defraud a claimant, assesses the value of the eligible claimant's homestead for an amount which is in excess of its true and actual value or is in excess of the assessed value of similar property in his county, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Each violation of this subsection shall constitute a separate offense.

(c) Failure to notify assessor. -- A claimant or his legal representative, who, prior to the next first day of July, fails to notify the assessor of the county wherein property subject to the homestead property tax exemption is located, that title to that property or a portion thereof was transferred by deed, grant, sale, gift, will or by the laws of this state regulating descent and distribution, that the property is no longer used and occupied for residential purposes exclusively by the claimant or that the claimant is no longer permanently and totally disabled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year or both.

(d) 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 the state for all taxes not paid due to an improper exemption for the claimant and interest thereon at the legal rate until paid.

WV Legislature

§11-6B-11. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

WV Legislature

§11-6B-12. Effective date.

(a) The provisions of this article enacted in the year 1981 took effect on July 1, 1981.

(b) Amendments to this article enacted in the year 1990 shall, regardless of the effective date of this act, be used to determine the assessed value of property on which ad valorem property taxes are levied for tax years beginning on or after January 1, 1990. assessors and county commissioners are hereby authorized and directed to review the claims for homestead exemption for the current tax year filed in their counties prior to October 2, 1989, and to make such changes in their books for the current tax year as may be needed to give these amendments their intended effect, regardless of any other provision in this chapter that may prohibit such action. Any person who has already paid property taxes for tax year 1990, and who is considered eligible for homestead exemption under this article, may apply pursuant to section twenty-seven, article three of this chapter for a refund for property taxes erroneously paid.

WV Legislature