WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 239

(By Senators Tomblin, Mr. President, and Caruth, By Request of the Executive)

[Passed March 8, 2008; to take effect July 1, 2008.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6H-1, §11-6H-2, §11-6H-3, §11-6H-4, §11-6H-5, §11-6H-6, §11-6H-7, §11-6H-8, §11-6H-9, §11-6H-10 and §11-6H-11; and to amend said code by adding thereto a new section, designated §11-21-24, all relating to the taxation of real property owned by senior citizens; providing definitions; providing deferment for payment of property tax
increment; specifying that the senior citizen property tax relief tax credit may be applied in lieu of such deferment; authorizing rules; requiring application for the deferment; providing for deferment renewal and waiver of deferment; providing procedures for the review and approval of application by the assessor; providing an appeals procedure; authorizing creation of a lien on property for which deferment is approved; specifying conditions for liens and lien payment and termination; requiring the Tax Commissioner to prescribe necessary forms and instructions; authorizing the Tax Commissioner to propose legislative rules; establishing criminal penalties; authorizing severability of provisions of the article; creating the Senior Citizen Property Tax Relief Credit Act; providing definitions; providing tax credit against personal income tax for payment of a specified property tax increment under certain circumstances; specifying that the senior citizen property tax payment deferment may be applied in lieu of such credit; requiring application for the tax credit; providing for tax credit renewal; providing procedures for the review and approval of application by the assessor; providing an appeals procedure; requiring the Tax Commissioner to prescribe necessary forms and instructions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-6H-1, §11-6H-2, §11-6H-3, §11-6H-4, §11-6H-5, §11-6H-6, §11-6H-7, §11-6H-8, §11-6H-9, §11-6H-10 and §11-6H-11; and that said code be amended by adding thereto a new section, designated §11-21-24, all to read as follows:

ARTICLE 6H. SENIOR CITIZEN PROPERTY TAX PAYMENT DEFERMENT ACT.

§11-6H-1. Short title.
This article shall be known as the Senior Citizen Property Tax Payment Deferment Act.

§11-6H-2. Definitions.

As used in this article, the following terms shall have the meaning ascribed to them in this section, 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) “Deferment” means a delay or postponement.

(3) “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.

(4) “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
(5) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment day.

(6) "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 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 property tax deferment specified in this article is approved by the assessor, or otherwise finally approved in accordance with the provisions of this article.

(7) "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 deferment, the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use.

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

§11-6H-3. Property tax payment deferment.

(a) The following homesteads shall qualify for the deferment provided in subsection (b) of this section:

(1) 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

(2) Any homestead that:

(A) 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;

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

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

(b) (1) For tax years commencing on or after the first day of January, two thousand nine, the owner of a homestead meeting the qualifications set forth in subsection (a) of this section may apply for a deferment in the payment of the tax increment of ad valorem taxes assessed under the authority of article three of this chapter on the homestead: Provided, That the deferment may be authorized only when the tax increment is the greater of three hundred dollars or ten percent or more: Provided, however, That all deferred taxes are not subject to any rate of interest.

(2) In lieu of the deferment of the tax increment authorized pursuant to this article, a taxpayer entitled to such deferment may elect to instead apply the senior citizen property tax relief credit authorized under section twenty-four, article twenty-one of this chapter. Any taxpayer making such election shall be fully subject to the terms and limitations set forth in section
§11-6H-4. Application for deferment; renewals; waiver of deferment.

(a) General. — No deferment may be allowed under this article unless an application for deferment is filed with the assessor of the county in which the homestead is located, on or before the first day of November 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.

(b) Renewals. — After the owner has filed an application for deferment with his or her assessor, there shall be no need for that owner to refile an application for the taxes so deferred.

(c) Waiver of deferment. — Any person otherwise qualified who does not apply for deferment from payment of a tax increment on or before the first day of November as specified in this article is considered to have waived his or her right to apply for deferment from such payment for that tax year.

§11-6H-5. Determination; notice of denial of application for deferment.

(a) The assessor shall, as soon as practicable after an application for deferment is filed, review that application and either approve or deny it. The assessor shall approve or disapprove an application for deferment within thirty days of receipt. Any application
not approved or denied within thirty days is deemed approved. If the application is denied, the assessor shall promptly, but not later than the first day of January, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county 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.

(b) In the event that the assessor has information sufficient to form a reasonable belief that an owner, after having been originally granted a deferment, is no longer eligible for the deferment, he or she shall, within thirty days after forming this reasonable belief, revoke the deferment 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.

§11-6H-6. Appeals procedure.

(a) Notice of appeal; thirty days. — Any owner aggrieved by the denial of his or her claim for application for deferment or the revocation of a previously approved deferment 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 deferment, as applicable, pursuant to section five of this article.

(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 following the tax year for which the deferment 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.

§11-6H-7. Termination of deferment.

Any deferment approved in accordance with the provisions of section five of this article shall terminate immediately when any of the following events occur:

(1) The death of the owner of the property for which the deferment was authorized;

(2) The sale of the property for which the deferment was approved;

(3) A determination by the assessor that the property for which the deferment was approved no longer qualifies for the deferment in accordance with the provisions of this article;

(4) The owner of the property for which the deferment was approved fails to maintain a fire insurance policy on the property that, if the property is destroyed, is sufficient to pay all debts for which the property is used as collateral and all tax increments that have been deferred and other charges provided by law;

(5) The owner of the property for which the deferment was approved fails to maintain a flood insurance policy
that, if the property is destroyed, is sufficient to pay all debts for which the property is used as collateral and all tax increments that have been deferred and other charges provided by law: Provided, That the provisions of this subdivision shall apply only to the following property: (A) Property within a flood elevation that has a one percent chance of being equaled or exceeded each year, as determined by the federal Emergency Management Agency; (B) property within a one hundred year floodplain as designated by the Federal Emergency Management Agency; or (C) property within a special flood hazard area as determined by the Federal Emergency Management Agency or as shown on the most current National Flood Insurance Program flood hazard boundary map, flood insurance rate map, or flood boundary and floodway map; or

(6) The tax increments deferred from payment and other charges provided by law are paid in full.

§11-6H-8. Property tax books; lien on property.

(a) Property book entry. — The amount deferred from payment of the tax increment shall be shown and continued on the property books until paid.

(b) Lien; statement to homestead owner. — The amount of the tax increment deferred from payment, and other charges as provided by law, shall be a lien on the real property for which the tax was assessed that continues until paid in full, and is not subject to the requirements for the collection of taxes provided in chapter eleven-a of this code. For purposes of this article.

(c) When lien is to be paid. — The lien required by this section shall be paid no later than ninety days following
the occurrence of any one of the events set forth in
section seven of this article.

(d) Limitation on execution on lien and limitation on
transfer of lien. — No county or levying body nor any
official, agent or representative thereof, shall execute
upon or collect upon any lien created pursuant to this
article until one of the conditions for termination of
deferment set forth in section seven of this article has
occurred. No county or levying body nor any official,
agent or representative thereof, shall assign or transfer
any right to execute upon or collect upon any such lien
to any other person or entity until one of the conditions
for termination of deferment set forth in section seven
of this article has occurred.


The Tax Commissioner shall prescribe and supply all
necessary instructions and forms for administration of
this article. 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
necessary for the implementation of this article.

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

(a) False or fraudulent claim for deferment. — Any
owner who willfully files a fraudulent application for
deferment and any person who knowingly assisted in
the preparation or filing of such fraudulent application
for deferment or who knowingly supplied information
upon which the fraudulent application for deferment
was prepared or allowed is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less
than two hundred fifty nor more than five hundred
dollars, or imprisoned in jail for not more than one year, or both fined and imprisoned.

(b) Failure to notify assessor. — Any owner who knowingly, prior to the next first day of July, fails to notify the assessor of the county wherein property subject to the tax increment deferment 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 or that the property is no longer used and occupied for residential purposes exclusively by the owner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in jail for not more than one year or both fined and imprisoned.

(c) 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 county for all taxes not paid due to an improper deferment, or continuation of a deferment, for the owner.


If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity does 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.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-24. Senior citizen property tax relief credit.
(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 the first day January, two thousand nine, 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 the thirtieth day of June following the July first 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 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 first 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 the first day of January, two thousand nine, any homeowner having a gross household income equal to or less than twenty-five thousand dollars 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 ten dollars.

(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 the first day of January, two thousand nine, 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.

(c) Qualification for credit. —

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

(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 the first day of January, two thousand nine, 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
Provided, That the tax credit may be authorized only when the tax increment is the greater of three hundred dollars 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 the first day of November 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 the first day of January, serve the owner with written notice explaining why the application was denied and furnish a form for filing with the county 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 the twenty-eighth day of February 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 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 two hundred fifty nor more than five hundred dollars, 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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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. Randy White  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2008.

Davids E. Hill  
Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Speaker House of Delegates

The within is approved this the Day of 2008.

Robert Hospital  
Governor
PRESENTED TO THE GOVERNOR

MAR 26 2008

Time 9:05AM