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
AN ACT to repeal §11-61-1, §11-61-2, §11-61-3, §11-61-4, §11-61-5, §11-61-6, §11-61-7, §11-61-8, §11-61-9, §11-61-10 and §11-61-11 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 §11-61-1, §11-61-2, §11-61-3, §11-61-4, §11-61-5, §11-61-6, §11-61-7, §11-61-8, §11-61-9, §11-61-10, and §11-61-11 of the code of West Virginia, 1931, as amended, be repealed; and that §11-21-21, §11-21-23, and §11-21-24 of said code be amended and reenacted, all to read as follows: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.

(a) Allowance of credit.--

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

(2) For tax years beginning on or after January 1, 2007, a low-income person who is allowed a $20,000 homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article
equal to the amount of ad valorem property taxes paid on up
to the first $20,000 of taxable assessed value of the
homestead for property tax years that begin on or after
January 1, 2007: Provided, That for tax years beginning on
and after January 1, 2009, any person who is required to pay
the federal alternative minimum income tax in the current tax
year is disqualified from receiving any tax credit provided
under this section.

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

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

(b) Terms defined. --

For purposes of this section:

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

(2) (A) For tax years beginning before January 1, 2007,
"taxes paid" means the aggregate of regular levies, excess
levies and bond levies extended against not more than
$10,000 of the taxable assessed value of a homestead that are
paid during the calendar year determined after application of
any discount for early payment of taxes but before
application of any penalty or interest for late payment of
property taxes for a property tax year that begins on or after
January 1, 2003, except as provided in paragraph (B) of this
subdivision.

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

(c) Legislative rule. --

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

(d) Confidentiality. --

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

(e) For tax years beginning on or after January 1, 2012,
taxpayers must calculate the credit authorized in this section
prior to calculating the credit authorized in section
twenty-three of this article.
§11-21-23. Refundable credit for real property taxes paid in excess of four percent of gross household income.

(a) For the tax years beginning on or after January 1, 2008, any homeowner 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 in excess of four percent of gross household income: Provided,

That for the tax years beginning on or after January 1, 2012, any low income homeowner living in his or her homestead in this state shall be allowed a refundable credit against the taxes imposed by this article equal to the amount by which the difference between West Virginia real property taxes paid for the tax year, minus the amount of credit authorized in section twenty-one of this article, exceeds four percent of the taxpayer’s gross household income for the tax year, as determined for purposes of this article. If the refundable credit provided in this section exceeds the amount of taxes imposed by this article, the state Tax Department shall refund that amount to the homeowner.

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

(c) 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.

(d) For the purposes of this section:

(1) “Gross household income” is defined as federal adjusted gross income plus the sum of the following:

(A) Modifications in subsection (b), section twelve of this article increasing federal adjusted gross income;
(B) Federal tax-exempt interest reported on federal tax return;

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

(D) Nontaxable Social Security benefits; and

(2) For the tax years beginning before January 1, 2008, "real property taxes paid" means 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 for property tax years that begin on or after January 1, 2008.

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

(f) No homeowner may receive a refundable tax credit imposed by this article in excess of $1,000. This amount shall
be reviewed annually by the Legislature to determine if an adjustment is necessary.

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

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

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

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

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


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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within is approved this the 34th day of March, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 11:00 AM