

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2949**

4 (By Delegates White and T. Campbell)

5
6 (Originating in the Committee on Finance)

7 [February 10, 2011]

8
9
10 A BILL to repeal §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5,
11 §11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and
12 §11-6I-11 of the Code of West Virginia, 1931, as amended; and
13 to amend and reenact §11-21-21, §11-21-23, and §11-21-24 of
14 said code, all relating to providing property tax relief to
15 taxpayers generally; providing definitions of "low income" for
16 purposes of property tax relief programs; allowing only "low
17 income" taxpayers to receive the tax credit benefits of
18 property tax relief programs; allowing those eligible for the
19 homestead exemption to take both the senior citizens' tax
20 credit for property tax paid on the first \$20,000 of taxable
21 assessed value of a homestead and the refundable tax credit
22 for real property taxes paid in excess of four percent of
23 gross household income; repealing the Senior Citizen Property
24 Tax Payment Deferment Act; and eliminating the alternative low
25 income property tax increment refundable credit program.

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

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3 the code of West Virginia, 1931, as amended, be repealed; and that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

6 **ARTICLE 21. PERSONAL INCOME TAX.**

7 **§11-21-21. Senior citizens' tax credit for property tax paid on**
8 **~~first \$10,000 of taxable assessed value of a~~**
9 **~~homestead in this state; tax credit for property~~**
10 **~~tax paid on the first \$20,000 of value for property~~**
11 **~~tax years after December 31, 2006~~ taxable assessed**
12 **value of a homestead in this state.**

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

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

23 (2) For tax years beginning on or after January 1, 2007, a
24 low-income person who is allowed a \$20,000 homestead exemption from
25 the assessed value of his or her homestead for ad valorem property

1 tax purposes, as provided in section three, article six-b of this
2 chapter, shall be allowed a refundable credit against the taxes
3 imposed by this article equal to the amount of ad valorem property
4 taxes paid on up to the first \$20,000 of taxable assessed value of
5 the homestead for property tax years that begin on or after January
6 1, 2007: *Provided*, That for tax years beginning on and after
7 January 1, 2009, any person who is required to pay the federal
8 alternative minimum income tax in the current tax year is
9 disqualified from receiving any tax credit provided under this
10 section.

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

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

18 (b) *Terms defined.* --

19 For purposes of this section:

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

26 (2) (A) For tax years beginning before January 1, 2007, "taxes

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

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

17 (c) *Legislative rule.* --

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

21 (d) *Confidentiality.* --

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

26 (e) For tax years beginning on or after January 1, 2012,

1 taxpayers must calculate the credit authorized in this section
2 prior to calculating the credit authorized in section twenty-three
3 of this article.

4 **§11-21-23. Refundable credit for real property taxes paid in**
5 **excess of four percent of gross household income.**

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

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

25 (c) The credit for each property tax year shall be claimed by
26 filing a claim for refund within twelve months after the real

1 property taxes are paid on the homestead.

2 (d) For the purposes of this section:

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

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

7 (B) Federal tax-exempt interest reported on federal tax
8 return;

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

10 (D) Nontaxable Social Security benefits; and

11 (2) For the tax years beginning before January 1, 2008, "real
12 property taxes paid" means the aggregate of regular levies, excess
13 levies and bond levies extended against the homestead that are paid
14 during the calendar year and determined after any application of
15 any discount for early payment of taxes but before application of
16 any penalty or interest for late payment of property taxes for
17 property tax years that begin on or after January 1, 2008.

18 (e) A homeowner is eligible to benefit from this section or
19 section twenty-one of this article, whichever section provides the
20 most benefit as determined by the homeowner. No homeowner may
21 receive benefits under both this section and section twenty-one of
22 this article during the same taxable year: Provided, That for tax
23 years beginning on or after January 1, 2012, a homeowner may take
24 the credit provided in this section in addition to the credit
25 provided in section twenty-one of this article, to be calculated as
26 provided in subsection (a) of this section. For tax years

1 beginning on and after January 1, 2009, any person who is required
2 to pay the federal alternative minimum income tax in the current
3 tax year is disqualified from receiving any tax credit provided
4 under this section. Nothing in this section denies those entitled
5 to the homestead exemption provided in section three, article six-b
6 of this chapter.

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

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

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

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

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

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

1 **§11-21-24. Senior citizen property tax relief credit for tax years**
2 **beginning before 2012.**

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

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

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

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

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

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

1 modular home regardless of whether the land upon which such mobile
2 or manufactured or modular home is situated is owned by another.

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

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

15 (8) "Tax increment" means the increase of ad valorem taxes
16 assessed on the homestead, determined as the difference between the
17 ad valorem taxes assessed on the homestead for the current tax year
18 and the ad valorem taxes assessed on the homestead for the tax year
19 immediately preceding the tax year for which the taxpayer's
20 application for tax credit specified in this section is approved by
21 the assessor, or otherwise finally approved in accordance with the
22 provisions of this article.

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

25 (10) "Used and occupied exclusively for residential purposes"
26 means that the property is used as an abode, dwelling or habitat

1 for more than six consecutive months of the calendar year prior to
2 the date of application by the owner thereof; and that subsequent
3 to making application for tax credit, the property is used only as
4 an abode, dwelling or habitat to the exclusion of any commercial
5 use.

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

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

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

25 (3) Notwithstanding the provisions of section twenty-one or
26 section twenty-three of this article, for property tax years that

1 begin on or after January 1, 2009, a homeowner is eligible to
2 benefit from this section, section twenty-one or twenty-three of
3 this article, whichever section provides the most benefit as
4 determined by the homeowner. No homeowner may receive benefits
5 under this section, section twenty-one or twenty-three of this
6 article during the same taxable year. Nothing in this section shall
7 be interpreted to deny any lawfully entitled taxpayer of the
8 homestead exemption provided in section three, article six-b of
9 this chapter.

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

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

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

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

20 (B) Any homestead that:

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

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

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

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

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

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

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

1 filed by the owner or his or her duly authorized agent.

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

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

9 (1) The assessor shall, as soon as practicable after an
10 application for tax credit is filed, review that application and
11 either approve or deny it. If the application is denied, the
12 assessor shall promptly, but not later than January 1, serve the
13 owner with written notice explaining why the application was denied
14 and furnish a form for filing with the county commission, should
15 the owner desire to take an appeal. The notice required or
16 authorized by this section shall be served on the owner or his or
17 her authorized representative either by personal service or by
18 certified mail. The assessor shall approve or disapprove an
19 application for tax credit within thirty days of receipt. Any
20 application not approved or denied within thirty days is deemed
21 approved.

22 (2) In the event that the assessor has information sufficient
23 to form a reasonable belief that an owner, after having been
24 originally granted a tax credit, is no longer eligible for the tax
25 credit, he or she shall, within thirty days after forming this
26 reasonable belief, revoke the tax credit and serve the owner with

1 written notice explaining the reasons for the revocation and
2 furnish a form for filing with the county commission should the
3 owner desire to take an appeal.

4 (f) *Appeals procedure.* --

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

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

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

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

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

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

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

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

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

16 (1) *False or fraudulent claim for tax credit.* -- Any owner who
17 willfully files a fraudulent application for tax credit and any
18 person who knowingly assisted in the preparation or filing of such
19 fraudulent application for tax credit or who knowingly supplied
20 information upon which the fraudulent application for tax credit
21 was prepared or allowed is guilty of a misdemeanor and, upon
22 conviction thereof, shall be fined not less than \$250 nor more than
23 \$500, or imprisoned in jail for not more than one year, or both
24 fined and imprisoned.

25 (2) In addition to the criminal penalties provided above, upon
26 conviction of any of the above offenses, the court shall order that

1 the defendant make restitution unto this state for all taxes not
2 paid due to an improper tax credit, or continuation of a tax
3 credit, for the owner and interest thereon at the legal rate until
4 paid.