

H. B. 2949

(By Delegates White and T. Campbell)

(By Request of Division of Tax)

[Introduced January 31, 2011; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to repeal §11-6I-1, §11-6I-2, §11-6I-3, §11-6I-4, §11-6I-5,
§11-6I-6, §11-6I-7, §11-6I-8, §11-6I-9, §11-6I-10 and
§11-6I-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 definitions of "low
income" for purposes of property tax relief programs; allowing
only "low income" taxpayers to receive the benefits of
property tax relief programs; allowing those eligible for the
senior citizen property tax credit programs 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 credit for real property taxes paid in excess of
four percent of gross household income; repealing the Senior
Citizen Property Tax Deferment Act and eliminating the senior
citizen property tax deferment refundable credit.

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

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4 the code of West Virginia, 1931, as amended, be repealed; and that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

7 **ARTICLE 21. PERSONAL INCOME TAX.**

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

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

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

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

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

20 (b) *Terms defined.* --

21 For purposes of this section:

22 (1) "Low income" means federal adjusted gross income for the
23 taxable year that is one hundred fifty percent or less of the
24 federal poverty guideline for the year in which property tax was

1 paid, based upon the number of individuals in the family unit
2 residing in the homestead, as determined annually by the United
3 States Secretary of Health and Human Services.

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

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

21 (c) *Legislative rule.* --

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

1 (d) *Confidentiality.* --

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

6 (e) For tax years beginning on or after January 1, 2012,
7 taxpayers must calculate the credit authorized in this section
8 prior to calculating the credit authorized in section twenty-three
9 of this article.

10 **§11-21-23. Refundable credit for real property taxes paid in excess**
11 **of four percent of gross household income.**

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

1 credit provided in this section exceeds the amount of taxes imposed
2 by this article, the state Tax Department ~~of Revenue~~ shall refund
3 that amount to the homeowner.

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

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

10 (d) For the purposes of this section:

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

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

15 (B) Federal tax-exempt interest reported on federal tax
16 return;

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

18 (D) Nontaxable Social Security benefits; and

19 (2) For the tax years beginning before January 1, 2008, "real
20 property taxes paid" means the aggregate of regular levies, excess
21 levies and bond levies extended against the homestead that are paid
22 during the calendar year and determined after any application of
23 any discount for early payment of taxes but before application of
24 any penalty or interest for late payment of property taxes for

1 property tax years that begin on or after January 1, 2008.

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

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

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

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

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

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

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

13 **§11-21-24. Senior citizen property tax relief credit for tax years**
14 **beginning before 2012.**

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

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

21 (2) "Real property taxes paid" means, for the tax years
22 beginning on or after January 1, 2009, the aggregate of regular
23 levies, excess levies and bond levies extended against the
24 homestead that are paid during the calendar year and determined

1 after any application of any discount for early payment of taxes
2 but before application of any penalty or interest for late payment
3 of property taxes.

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

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

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

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

1 possession.

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

5 (8) "Tax increment" means the increase of ad valorem taxes
6 assessed on the homestead, determined as the difference between the
7 ad valorem taxes assessed on the homestead for the current tax year
8 and the ad valorem taxes assessed on the homestead for the tax year
9 immediately preceding the tax year for which the taxpayer's
10 application for tax credit specified in this section is approved by
11 the assessor, or otherwise finally approved in accordance with the
12 provisions of this article.

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

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

22 (b) *Refundable credit.* -- Subject to the requirements and
23 limitations of this section, for the tax years beginning on or
24 after January 1, 2009, any homeowner having a gross household

1 income equal to or less than \$25,000 for the tax year, living in
2 his or her homestead shall be allowed a refundable credit against
3 the taxes imposed by this article equal to the amount of real
4 property taxes paid that are attributable to the tax increment of
5 ad valorem taxes assessed under the authority of article three of
6 this chapter on the homestead: Provided, That the gross household
7 income shall be adjusted annually in accordance with the consumer
8 price index. The credit shall be applied against the personal
9 income tax in the personal income tax year of the taxpayer when the
10 property tax increment was actually paid.

11 (1) 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 (2) The credit for each property tax year shall be claimed by
15 filing a claim for refund within twelve months after the real
16 property taxes are paid on the homestead.

17 (3) Notwithstanding the provisions of section twenty-one or
18 section twenty-three of this article, for property tax years that
19 begin on or after January 1, 2009, a homeowner is eligible to
20 benefit from this section, section twenty-one or twenty-three of
21 this article, whichever section provides the most benefit as
22 determined by the homeowner. No homeowner may receive benefits
23 under this section, section twenty-one or twenty-three of this
24 article during the same taxable year. Nothing in this section shall

1 be interpreted to deny any lawfully entitled taxpayer of the
2 homestead exemption provided in section three, article six-b of
3 this chapter.

4 (4) No tax credit shall be allowed under this section for tax
5 years beginning on or after January 1, 2012.

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

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

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

12 (B) Any homestead that:

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

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

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

21 (2) (A) For tax years commencing on or after January 1, 2009,
22 the owner of a homestead meeting the qualifications set forth in
23 subdivision (1) of this subsection may apply for a tax credit in
24 the amount of the tax increment of ad valorem taxes assessed under

1 the authority of article three of this chapter on the homestead,
2 subject to the limitations set forth in this section: *Provided,*
3 That the tax credit may be authorized only when the tax increment
4 is the greater of \$300 or ten percent or more.

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

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

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

22 (2) *Renewals. --* After the owner has filed an application for
23 tax credit with his or her assessor, there shall be no need for
24 that owner to refile an application for the tax credit. However,

1 the taxpayer shall in all cases be required to file a personal
2 income tax return in order to claim the credit in any tax year.

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

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

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

1 owner desire to take an appeal.

2 (f) *Appeals procedure.* --

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

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

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

22 (1) Any tax credit approved in accordance with the provisions
23 of this section shall terminate immediately when any of the
24 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.

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

NOTE: The purpose of this bill is to simplify and consolidate senior citizen property tax relief programs, and make those programs available only to eligible "low income" homeowners.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.