

1 **Senate Bill No. 345**

2 (By Senators Prezioso, D. Facemire, Unger, Foster, Jenkins, Nohe,
3 McCabe, Stollings, Klempa, Beach and Yost)

4 _____
5 [Introduced January 31, 2011; referred to the Committee on
6 Finance.]

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8 **FISCAL**
9 **NOTE**

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

1 citizen property tax deferment refundable credit.

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

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5 the Code of West Virginia, 1931, as amended, be repealed; and that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

8 **ARTICLE 21. PERSONAL INCOME TAX.**

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

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

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

24 (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
25 paid, based upon the number of individuals in the family unit

1 residing in the homestead, as determined annually by the United
2 States Secretary of Health and Human Services.

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

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

20 (c) *Legislative rule.* --

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

24 (d) *Confidentiality.* --

25 The Tax Commissioner shall utilize property tax information in

1 the statewide electronic data processing system network to the
2 extent necessary for the purpose of administering this section,
3 notwithstanding any provision of this code to the contrary.

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

8 **§11-21-23. Refundable credit for real property taxes paid in excess**
9 **of four percent of gross household income.**

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

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

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

7 (d) For the purposes of this section:

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

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

12 (B) Federal tax-exempt interest reported on federal tax
13 return;

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

15 (D) Nontaxable Social Security benefits; and

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

23 (e) A homeowner is eligible to benefit from this section or
24 section twenty-one of this article, whichever section provides the
25 most benefit as determined by the homeowner. No homeowner may

1 receive benefits under both this section and section twenty-one of
2 this article during the same taxable year: Provided, That for tax
3 years beginning on or after January 1, 2012 a homeowner may take
4 the credit provided in this section in addition to the credit
5 provided in section twenty-one of this article, to be calculated as
6 provided in subsection (a) of this section. For tax years
7 beginning on and after January 1, 2009, any person who is required
8 to pay the federal alternative minimum income tax in the current
9 tax year is disqualified from receiving any tax credit provided
10 under this section. Nothing in this section denies those entitled
11 to the homestead exemption provided in section three, article six-b
12 of this chapter.

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

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

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

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

24 (2) "Low income" means federal adjusted gross income for the
25 tax year that is three hundred percent or less of the federal

1 poverty guideline for the year in which property tax was paid,
2 based upon the number of individuals in the family unit residing in
3 the homestead, as determined annually by the United States
4 Secretary of Health and Human Services.

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

8 **§11-21-24. Senior citizen property tax relief credit for tax years**
9 **beginning before 2012.**

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

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

16 (2) "Real property taxes paid" means, for the tax years
17 beginning on or after January 1, 2009, the aggregate of regular
18 levies, excess levies and bond levies extended against the
19 homestead that are paid during the calendar year and determined
20 after any application of any discount for early payment of taxes
21 but before application of any penalty or interest for late payment
22 of property taxes.

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

25 (4) "Gross household income" means gross household income as

1 defined in section twenty-three of this article.

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

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

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

23 (8) "Tax increment" means the increase of ad valorem taxes
24 assessed on the homestead, determined as the difference between the
25 ad valorem taxes assessed on the homestead for the current tax year

1 and the ad valorem taxes assessed on the homestead for the tax year
2 immediately preceding the tax year for which the taxpayer's
3 application for tax credit specified in this section is approved by
4 the assessor, or otherwise finally approved in accordance with the
5 provisions of this article.

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

8 (10) "Used and occupied exclusively for residential purposes"
9 means that the property is used as an abode, dwelling or habitat
10 for more than six consecutive months of the calendar year prior to
11 the date of application by the owner thereof; and that subsequent
12 to making application for tax credit, the property is used only as
13 an abode, dwelling or habitat to the exclusion of any commercial
14 use.

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

1 income tax in the personal income tax year of the taxpayer when the
2 property tax increment was actually paid.

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

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

9 (3) Notwithstanding the provisions of section twenty-one or
10 section twenty-three of this article, for property tax years that
11 begin on or after January 1, 2009, a homeowner is eligible to
12 benefit from this section, section twenty-one or twenty-three of
13 this article, whichever section provides the most benefit as
14 determined by the homeowner. No homeowner may receive benefits
15 under this section, section twenty-one or twenty-three of this
16 article during the same taxable year. Nothing in this section shall
17 be interpreted to deny any lawfully entitled taxpayer of the
18 homestead exemption provided in section three, article six-b of
19 this chapter.

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

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

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

25 (A) Any homestead owned by an owner sixty-five years of age or

1 older and used and occupied exclusively for residential purposes by
2 such owner; and

3 (B) Any homestead that:

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

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

10 (iii) Has been retained by the owner for noncommercial
11 purposes.

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

20 (B) In lieu of the tax credit authorized under this section,
21 a taxpayer entitled to such credit may elect to instead apply the
22 deferment of the tax increment authorized pursuant to article six-h
23 of this chapter. Any taxpayer making such election shall be fully
24 subject to the terms and limitations set forth in article six-h of
25 this chapter.

1 (d) *Application for tax credit; renewals; waiver of tax*
2 *credit.* --

3 (1) *General.* -- No tax credit may be allowed under this
4 section unless an application for tax credit is filed with the
5 assessor of the county in which the homestead is located, on or
6 before November 1 following mailing of the tax ticket in which the
7 tax increment that is the subject of the application is contained,
8 such tax ticket being mailed pursuant to section eight, article
9 one, chapter eleven-a of this code. In the case of sickness,
10 absence or other disability of the owner, the application may be
11 filed by the owner or his or her duly authorized agent.

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

17 (e) *Determination; notice of denial of application for tax*
18 *credit.* --

19 (1) The assessor shall, as soon as practicable after an
20 application for tax credit is filed, review that application and
21 either approve or deny it. If the application is denied, the
22 assessor shall promptly, but not later than January 1, serve the
23 owner with written notice explaining why the application was denied
24 and furnish a form for filing with the county commission, should
25 the owner desire to take an appeal. The notice required or

1 authorized by this section shall be served on the owner or his or
2 her authorized representative either by personal service or by
3 certified mail. The assessor shall approve or disapprove an
4 application for tax credit within thirty days of receipt. Any
5 application not approved or denied within thirty days is deemed
6 approved.

7 (2) In the event that the assessor has information sufficient
8 to form a reasonable belief that an owner, after having been
9 originally granted a tax credit, is no longer eligible for the tax
10 credit, he or she shall, within thirty days after forming this
11 reasonable belief, revoke the tax credit and serve the owner with
12 written notice explaining the reasons for the revocation and
13 furnish a form for filing with the county commission should the
14 owner desire to take an appeal.

15 (f) *Appeals procedure.* --

16 (1) *Notice of appeal; thirty days.* -- Any owner aggrieved by
17 the denial of his or her claim for application for tax credit or
18 the revocation of a previously approved tax credit may appeal to
19 the county commission of the county within which the property is
20 situated. All such appeals shall be filed within thirty days after
21 the owner's receipt of written notice of the denial of an
22 application or the revocation of a previously approved tax credit,
23 as applicable, pursuant to subsection (e) of this section.

24 (2) *Review; determination; appeal.* -- The county commission
25 shall complete its review and issue its determination as soon as

1 practicable after receipt of the notice of appeal, but in no event
2 later than February 28 following the tax year for which the tax
3 credit was sought. In conducting its review, the county commission
4 may hold a hearing on the application. The assessor or the owner
5 may apply to the circuit court of the county for review of the
6 determination of the county commission in the same manner as is
7 provided for appeals from the county commission in section
8 twenty-five, article three of this chapter.

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

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

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

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

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

20 (h) *Forms, instructions and regulations.* -- The Tax
21 Commissioner shall prescribe and supply all necessary instructions
22 and forms for administration of this section. Additionally, the Tax
23 Commissioner may propose rules for legislative approval in
24 accordance with the provisions of article three, chapter
25 twenty-nine-a of this code as the Tax Commissioner considers

1 necessary for the implementation of this section.

2 (~~¶~~ i) *Criminal penalties; restitution.* --

3 (1) *False or fraudulent claim for tax credit.* -- Any owner who
4 willfully files a fraudulent application for tax credit and any
5 person who knowingly assisted in the preparation or filing of such
6 fraudulent application for tax credit or who knowingly supplied
7 information upon which the fraudulent application for tax credit
8 was prepared or allowed is guilty of a misdemeanor and, upon
9 conviction thereof, shall be fined not less than \$250 nor more than
10 \$500, or imprisoned in jail for not more than one year, or both
11 fined and imprisoned.

12 (2) In addition to the criminal penalties provided above, upon
13 conviction of any of the above offenses, the court shall order that
14 the defendant make restitution unto this state for all taxes not
15 paid due to an improper tax credit, or continuation of a tax
16 credit, for the owner and interest thereon at the legal rate until
17 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.