

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2949**

5 (By Delegates White and T. Campbell)

6  
7 [Passed March 10, 2011; in effect ninety days from passage.]

8  
9  
10 AN ACT 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3 the code of West Virginia, 1931, as amended, be repealed; and that  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 \$20,000 of taxable assessed value of a**  
9 **homestead in this state.**

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

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

20           (2) For tax years beginning on or after January 1, 2007, a  
21 low-income person who is allowed a \$20,000 homestead exemption from  
22 the assessed value of his or her homestead for ad valorem property  
23 tax purposes, as provided in section three, article six-b of this  
24 chapter, shall be allowed a refundable credit against the taxes  
25 imposed by this article equal to the amount of ad valorem property

1 taxes paid on up to the first \$20,000 of taxable assessed value of  
2 the homestead for property tax years that begin on or after January  
3 1, 2007: *Provided*, That for tax years beginning on and after  
4 January 1, 2009, any person who is required to pay the federal  
5 alternative minimum income tax in the current tax year is  
6 disqualified from receiving any tax credit provided under this  
7 section.

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

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

15 (b) *Terms defined.* --

16 For purposes of this section:

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

23 (2) (A) For tax years beginning before January 1, 2007, "taxes  
24 paid" means the aggregate of regular levies, excess levies and bond  
25 levies extended against not more than \$10,000 of the taxable  
26 assessed value of a homestead that are paid during the calendar

1 year determined after application of any discount for early payment  
2 of taxes but before application of any penalty or interest for late  
3 payment of property taxes for a property tax year that begins on or  
4 after January 1, 2003, except as provided in paragraph (B) of this  
5 subdivision.

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

14 (c) *Legislative rule.* --

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

18 (d) *Confidentiality.* --

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

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

1 **§11-21-23. Refundable credit for real property taxes paid in**  
2 **excess of four percent of gross household income.**

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

19 (b) 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 (c) 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 (d) For the purposes of this section:

26 (1) "Gross household income" is defined as federal adjusted

1 gross income plus the sum of the following:

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

4 (B) Federal tax-exempt interest reported on federal tax  
5 return;

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

7 (D) Nontaxable Social Security benefits; and

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

15 (e) A homeowner is eligible to benefit from this section or  
16 section twenty-one of this article, whichever section provides the  
17 most benefit as determined by the homeowner. No homeowner may  
18 receive benefits under both this section and section twenty-one of  
19 this article during the same taxable year: *Provided*, That for tax  
20 years beginning on or after January 1, 2012, a homeowner may take  
21 the credit provided in this section in addition to the credit  
22 provided in section twenty-one of this article, to be calculated as  
23 provided in subsection (a) of this section. For tax years  
24 beginning on and after January 1, 2009, any person who is required  
25 to pay the federal alternative minimum income tax in the current  
26 tax year is disqualified from receiving any tax credit provided

1 under this section. Nothing in this section denies those entitled  
2 to the homestead exemption provided in section three, article six-b  
3 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

23           (10) "Used and occupied exclusively for residential purposes"  
24 means that the property is used as an abode, dwelling or habitat  
25 for more than six consecutive months of the calendar year prior to  
26 the date of application by the owner thereof; and that subsequent

1 to making application for tax credit, the property is used only as  
2 an abode, dwelling or habitat to the exclusion of any commercial  
3 use.

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

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

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

23 (3) Notwithstanding the provisions of section twenty-one or  
24 section twenty-three of this article, for property tax years that  
25 begin on or after January 1, 2009, a homeowner is eligible to  
26 benefit from this section, section twenty-one or twenty-three of

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

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

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

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

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

18 (B) Any homestead that:

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

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

25 (iii) Has been retained by the owner for noncommercial  
26 purposes.

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

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

15           (d) *Application for tax credit; renewals; waiver of tax*  
16 *credit. --*

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

26           (2) *Renewals. --* After the owner has filed an application for

1 tax credit with his or her assessor, there shall be no need for  
2 that owner to refile an application for the tax credit. However,  
3 the taxpayer shall in all cases be required to file a personal  
4 income tax return in order to claim the credit in any tax year.

5 (e) *Determination; notice of denial of application for tax*  
6 *credit. --*

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

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

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

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

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

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

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

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

23 (2) In addition to the criminal penalties provided above, upon  
24 conviction of any of the above offenses, the court shall order that  
25 the defendant make restitution unto this state for all taxes not  
26 paid due to an improper tax credit, or continuation of a tax

1 credit, for the owner and interest thereon at the legal rate until  
2 paid.