

1 **H. B. 4604**

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3 (By Delegates Perry, Frazier, Hall and Moore)
4 [Introduced February 17, 2012; referred to the
5 Committee on the Judiciary then Finance.]
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10 A BILL to amend and reenact §11-4-3 of the Code of West Virginia,
11 1931, as amended, relating to assessment of real property; and
12 providing that real property shall be assessed as "Used and
13 occupied by the owner thereof exclusively for residential
14 purpose" when the owner or spouse of the owner is residing
15 with a family member, regardless of when the owner or spouse
16 of the owner began residing with a family member.

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

18 That §11-4-3 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 4. ASSESSMENT OF REAL PROPERTY.**

21 **§11-4-3. Definitions.**

22 (a) For the purpose of giving effect to the Tax Limitations

1 Amendment, this chapter shall be interpreted in accordance with the
2 following definitions, unless the context clearly requires a
3 different meaning:

4 (1) "Owner" means the person, as defined in section ten,
5 article two, chapter two of this code, who is possessed of the
6 freehold, whether in fee or for life. A person seized or entitled
7 in fee subject to a mortgage or deed of trust securing a debt or
8 liability is considered the owner until the mortgagee or trustee
9 takes possession, after which the mortgagee or trustee shall be
10 considered the owner. A person who has an equitable estate of
11 freehold, or is a purchaser of a freehold estate who is in
12 possession before transfer of legal title is also considered the
13 owner. Owner shall also include the corporation or other
14 organization possessed of the freehold of a qualified continuing
15 care retirement community.

16 (2) "Used and occupied by the owner thereof exclusively for
17 residential purpose" means actual habitation by the owner or the
18 owner's spouse, or a qualified resident of all or a portion of a
19 parcel of real property as a place of abode to the exclusion of any
20 commercial use: *Provided*, That if the parcel of real property was
21 unoccupied at the time of assessment and either: (A) Was used and
22 occupied by the owner or spouse of the owner thereof exclusively

1 for residential purposes on July 1, of the previous year assessment
2 date, or at least two years prior to the date of that assessment;
3 (B) was unimproved on July 1, of the previous year but a building
4 improvement for residential purposes was subsequently constructed
5 thereon between that date and the time of assessment; or (C) is
6 retained by the property owner for noncommercial purposes and was
7 most recently used and occupied by the owner or the owner's spouse
8 as a residence and the owner, as a result of death of a spouse,
9 illness, accident or infirmity, is residing with a family member,
10 wherever situate or is a resident in a nursing home, personal care
11 home, rehabilitation center or similar facility, regardless of when
12 the owner or spouse of the owner began residing with a family
13 member, then the property shall be considered "used and occupied
14 by the owner thereof exclusively for residential purpose":
15 *Provided, however,* That nothing herein contained shall permit an
16 unoccupied or unimproved property to be considered "used and
17 occupied by the owner thereof exclusively for residential purposes"
18 for more than one year unless the owner, as a result of death of a
19 spouse, illness, accident or infirmity, is residing with a family
20 member, wherever situate or is a resident of a nursing home,
21 personal care home, rehabilitation center or similar facility,
22 regardless of when the owner or spouse of the owner began residing
23 with a family member. Except in the case of a qualified continuing

1 care retirement community, if a license is required for an activity
2 on the premises or if an activity is conducted thereon which
3 involves the use of equipment of a character not commonly employed
4 solely for domestic as distinguished from commercial purposes, the
5 use may not be considered to be exclusively residential. In the
6 case of a qualified continuing care retirement community, uses
7 attendant to the functioning of the qualified continuing care
8 retirement community, including, without limitation, cafeteria,
9 laundry, personal and health care services, shall not be considered
10 a commercial use even if such activity or equipment requires a
11 separate license or payment.

12 (3) "Family member" means a person who is related by common
13 ancestry, adoption or marriage including, but not limited to,
14 persons related by lineal and collateral consanguinity.

15 (4) "Farm" means a tract or contiguous tracts of land used for
16 agriculture, horticulture or grazing and includes all real property
17 designated as "wetlands" by the United States Army Corps of
18 Engineers or the United States Fish and Wildlife Service.

19 (5) "Occupied and cultivated" means subjected as a unit to
20 farm purposes, whether used for habitation or not, and although
21 parts may be lying fallow, in timber or in wastelands.

22 (6) "Qualified continuing care retirement community" means a
23 continuing care retirement community: (A) Owned by a corporation

1 or other organization exempt from federal income taxes under the
2 Internal Revenue Code; (B) used in a manner consistent with the
3 purpose of providing housing and health care for residents; and (C)
4 which receives no Medicaid funding under the provisions of article
5 four-b, chapter nine of this code. For purposes of this section,
6 a continuing care retirement community is a licensed facility under
7 the provisions of articles five-c and five-d, chapter sixteen of
8 this code at which independent living, assisted living and nursing
9 care, if necessary, are provided to qualified residents.

10 "Qualified resident" means a person who contracts with a
11 qualified continuing care retirement community to reside therein,
12 in exchange for the payment of an entrance fee or deposit, or
13 payment of periodic charges, or both.

14 (b) *Effective date of amendments.* -- Amendments to this
15 section enacted during the 2006 regular session of the Legislature
16 shall have retroactive effect to and including July 1, 2005, and
17 shall apply in determining tax for tax years beginning January 1,
18 2006, and thereafter.

19 *Effective date of amendments.* -- Amendments to this section
20 enacted during the 2007 regular session of the Legislature shall
21 take effect on July 1, 2007.

22 (c) *Effective date of amendments.* -- Amendments to this
23 section enacted during the 2012 regular session of the Legislature

1 shall have retroactive effect to and including July 1, 2011, and
2 shall apply in determining tax for tax years beginning January 1,
3 2012, and thereafter.

NOTE: The purpose of this bill is to provide that real property shall be assessed as "Used and occupied by the owner thereof exclusively for residential purpose" when the owner or spouse of the owner is residing with a family member, regardless of when the owner or spouse of the owner began residing with a family member.

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