

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4

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2001 OCT -4 A 11: 22

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-21-21(c)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

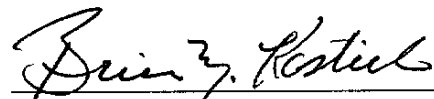
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21B

TITLE OF RULE BEING PROPOSED: Senior Citizen Tax Credit for Property Taxes Paid

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Brian M. Kastick, Secretary of Tax & Revenue

MODIFIED

FILED

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
SERIES 21B

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SENIOR CITIZEN TAX CREDIT FOR PROPERTY TAXES PAID

§ 110-21B-1. General

1.1 **Scope** – This rule provides necessary guidance on implementing the personal income tax credit available to certain senior citizens, as provided in West Virginia Code § 11-21-21.

1.2 **Authority** – West Virginia Code § 11-21-21(c).

1.3 **Effective Date** –

1.4 **Filing Date** –

§ 110-21B-2. Definitions. When used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

2.1 **“Ad valorem tax”** means the tax imposed upon the value of property as authorized by West Virginia Constitution Article X, Section 1.

2.2 **“Assessed value”** means the value of property as determined under West Virginia Code § 11-3-1 et seq.

2.3 **“Commissioner”** means the West Virginia Tax Commissioner, or his or her delegate.

2.4 **“Department”** means the West Virginia State Tax Department.

2.5 **“Homestead”** means a single family residential house, including a mobile or manufactured or modular home, and the land surrounding the structure; or a mobile or manufactured or modular home regardless of whether the land upon which the mobile or manufactured or modular home is situated is owned or leased.

2.6 **“Low income”** means federal adjusted gross income for the taxable year that is 150% or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined by the United States Secretary of Health and Human Services.

2.7 **"Owner"** means the person who possesses the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust is considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be considered the property of the party in possession.

2.8 **"Personal income tax"** means the tax imposed by West Virginia Code § 11-21-1 et seq.

2.9 **"State"** means the State of West Virginia.

2.10 **"System"** means the statewide data processing system for property tax administration authorized by West Virginia Code § 11-1A-21.

2.11 **"Taxable assessed value"** means the assessed value of the homestead remaining after application of the homestead exemption.

2.12 **"Taxes paid"** means the aggregate of regular levies, excess levies and bond levies of property taxes extended against not more than ten thousand dollars of the taxable assessed value of a homestead that are paid during the calendar year, determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after January 1, 2002.

2.13 **"Taxpayer"** means an owner who qualifies for the homestead exemption and is required to file a personal income tax return or is liable for the payment of personal income tax.

§ 110-21B-3. Senior citizen tax credit.

3.1 A low income taxpayer who under the authority of West Virginia Code § 11-6B-1 et seq., is allowed a homestead exemption from ad valorem tax shall be allowed a credit against West Virginia personal income tax in an amount equal to the ad valorem property taxes paid by that person on up to the first \$10,000 of taxable assessed value of the homestead.

3.1.1 The credit commences for ad valorem taxes paid for property tax years that begin on or after January 1, 2003.

3.1.2 The credit may only be claimed by a taxpayer that qualifies under subsection 3.1 of this rule and only on the annual personal income tax return filed by that taxpayer.

§ 110-21B-4. Qualification for Homestead Exemption.

4.1 The determination as to whether a property owner qualifies for the homestead exemption shall be made by the assessor of the county in which the property owner resides. When an owner is qualified, the homestead exemption attaches to the homestead occupied by the qualified owner.

4.2 If the property owner qualifies for the homestead exemption, the assessor shall enter the following information about the qualifying property into the System

4.2.1 The name and address of the owner;

4.2.2 The county identifier for the county in which the property is located;

4.2.3 The tax district identifier for the tax district in which the property is located;

4.2.4 The map number where the property may be found;

4.2.5 The parcel number for the property;

4.2.6 The assessed value of the property after application of the homestead exemption; and

4.2.7 The gross property tax on the property after application of the homestead exemption.

4.3 The assessor shall maintain the information required in subsection 4.2 of this rule.

§ 110-21B-5. Determination of eligibility.

5.1 The Commissioner shall, using the information entered into the System by the assessor, annually determine the taxpayers that qualify for the homestead exemption.

5.1.1 The Commissioner shall also determine the amount of the tax credit available to the respective taxpayers. The amount of the tax credit shall be based upon the information in the System.

§ 110-21B-6. Notice of eligibility, forms and instructions.

6.1 The Commissioner shall annually issue a taxpayer specific notice to be communicated to the respective taxpayers. The notice shall state the amount of credit that, based upon the information applicable to a given tax year in the System, may be available to the taxpayer.

6.2 The Department shall prepare appropriate forms and instructions to be used for calculating the actual amount of credit claimed by the taxpayer.

§ 110-21B-7. Calculation of Credit.

7.1 The definition of "taxes paid" requires that the amount subject to the credit be determined after application of any discount for early payment but before application of any penalty or interest for late payment.

7.1.1 West Virginia Code § 11A-1-3 authorizes the payment of ad valorem taxes in two installments. The first installment is payable on or before September 1st and becomes delinquent on October 1st. The second installment is payable on or before the succeeding March 1st and becomes delinquent April 1st.

7.1.2 Taxes paid on or before the date they are payable are subject to a 2 ½% discount. Delinquent taxes are subject to accrued interest at the rate of 9% per year, and the accrued interest is added to the delinquent taxes until the taxes plus interest are paid.

7.1.3 "Taxes paid" therefore is the amount remaining either after the tax amount due is reduced by the application of the discount or before the tax amount due is increased by the addition of any interest or penalties.

7.2 Examples are found in the appendix to this rule.

APPENDIX

Example 1.

The credit available (when the taxpayer pays the property tax liability after the date for eligibility to receive a 2 ½ % discount) for eligible property with an assessed value of \$30,000 is calculated as follows.

Assessed value of eligible property as found on county property book.	\$30,000
Homestead Exemption	20,000
Taxable assed value	10,000
Average tax rate (varies by county)	.0123
Property tax due the county sheriff	\$123.00*
Tax credit available to eligible owner	\$123.00

*paid after discount period expires

Example 2.

The credit available (when the taxpayer pays the property tax liability on or before the date for eligibility to receive a 2 ½% discount) for eligible property with an assessed value of \$25,000 is calculated as follows.

Assessed value of eligible property as found on county land book	\$25,000
Homestead Exemption	20,000
Taxable assessed value	5,000
Average tax rate (varies by county)	.0123
Property tax due the county sheriff	59.96*
Tax credit available to eligible owner	59.96

*paid before discount expires

Example 3.

The credit available for eligible property with an assessed value of \$19,000 is calculated as follows.

Assessed value of eligible property as found on county land book	\$19,000
Homestead Exemption	20,000
Taxable assessed value	0
Property taxes due the county sheriff	0
Tax credit available	0