

02-094

**TAXATION: INCOME TAX – VIRGINIA LAND CONSERVATION INCENTIVES
ACT OF 1999.**

Allowance of credit against individual and corporate income tax in amount equal to 50% of fair market value of land or interest in land donated for conservation purposes. Donor of land or interest in land may transfer tax credit to other taxpayers to make full use of credit. Meaning of 'taxpayer' for purposes of Act.

The Honorable William J. Howell
Member, House of Delegates
November 19, 2002

I am responding to your request for an official advisory opinion pursuant to § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire concerning the maximum tax credit that may be transferred in connection with the donation of land for conservation purposes under the Commonwealth's land conservation tax credit program. You also ask whether a taxpayer transferee in receipt of the tax credit must carry it forward as set forth in § 58.1-512(B). You further inquire as to the meaning of the term "taxpayer" as that word is used in § 58.1-513(C).

Response

It is my opinion that § 58.1-512(A) allows a credit against individual and corporate income tax in an amount equal to fifty percent of the fair market value of any land or interest in land donated for conservation purposes. It is further my opinion that the donor of the land or interest in land may transfer such credit to other taxpayers in order to utilize fully the tax credit. Each individual taxpayer receiving a transferred credit is subject to the provisions of § 58.1-512(B.1). Finally, the term "taxpayer," for purposes of § 58.1-513(C), means that any person, corporation, partnership, organization, trust, or estate subject to state or local taxation may hold and transfer the land conservation tax credit. Only those taxpayers subject to state income taxes, however, may benefit from actual use of the tax credit to offset a tax liability.

Background

You relate that there have been questions regarding the ability to benefit fully from tax credits authorized by the General Assembly to encourage land conservation. You further relate that these questions involve the interplay between the statutory language establishing the land conservation credit amount and the annual limitation per taxpayer. Therefore, you seek guidance as to the maximum amount of credit available to a taxpayer for donations of land or interests in land for conservation purposes in excess of \$1,200,000, and how such credit may be fully utilized.

Applicable Law and Discussion

The General Assembly enacted the Virginia Land Conservation Incentives Act of 1999¹ "to supplement existing land conservation programs to further encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces and forested resources."² Among the incentives provided to encourage land preservation is a tax credit to offset individual and corporate income tax liability for "an amount equal to fifty percent of the fair market value of any land or interest in land located in Virginia which is conveyed ... for conservation ... purposes."³ The amount of the credit that a taxpayer may claim to offset his state income tax is limited to \$100,000 annually for tax years beginning on or after January 1, 2002.⁴ A taxpayer is allowed to carry forward any unused tax credit "for a maximum of five consecutive taxable years following the taxable year in which the credit originated until fully expended."⁵ Prior to the enactment of § 58.1-513(C), if a taxpayer donated land worth more than \$1,200,000, a portion of the tax credit was lost, because the taxpayer was limited to \$100,000 credit per tax year for no more than six years.⁶

The 2002 Session of the General Assembly added subsection C to § 58.1-513, relating to land preservation income tax credits:

Any taxpayer holding a credit under this article^[7] may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer that transfers any amount of credit under this article shall file a notification of such transfer to the Department [of Taxation] in accordance with procedures and forms prescribed by the Tax Commissioner.^[8]

Your inquiry concerns whether the phrase "unused but otherwise allowable credit" in § 58.1-513(C) refers to the amount of the tax credit a taxpayer may claim to offset his tax liability or to the total

allowable amount of the tax credit. Section 58.1-512(A) provides that "there shall be *allowed as a credit* ... an amount equal to fifty percent of the fair market value of any land or interest in land located in Virginia" conveyed for the land conservation purposes specified therein. (Emphasis added.) Section 58.1-512(B.1) provides that "[t]he *amount of the credit* that may be claimed by a taxpayer shall not exceed ... \$100,000 for 2002 taxable years and thereafter." (Emphasis added.) Section 58.1-512(A) provides the mechanism to calculate the upper limit of the tax credit allowed to the taxpayer. Section 58.1-512(B.1) limits the amount of the tax credit that a taxpayer may claim to offset his income tax liability.

Absent ambiguity, the plain meaning of a statute must prevail.⁹ "[A] word in a statute is to be given its everyday, ordinary meaning unless the word is a [term] of art."¹⁰ It is clear that the words "otherwise *allowable*" in § 58.1-513(C) refer to the calculation of the total amount *allowed* as a credit pursuant to § 58.1-512(A). The "otherwise allowable" amount of the tax credit is fifty percent of the fair market value of the donated land or interest in land. The term "use" means to "avail oneself of."¹¹ An "unused" tax credit is a credit that one has not availed oneself of. Reading §§ 58.1-512(A)-(B.1) and 58.1-513(C) together, the total "allowable credit" (one-half of the value of the property) may be used, to the extent of \$600,000 (100,000 per year for six years), by the taxpayer originally receiving the credit for the donation of land. To the extent a taxpayer holding a credit is unable to "avail himself of the credit" in any one year or over the course of six years, the credit may be transferred to another taxpayer.

Section 58.1-513 encourages conservation by enhancing the value of the tax credit available for land valued in excess of \$1,200,000. Section 58.1-513(C) permits a taxpayer to transfer an "unused but otherwise allowable credit." Section 58.1-513(C) thus allows the transfer of the unused tax credit to another taxpayer or other taxpayers to fully use the credit available for the donation of land.

You next ask whether a taxpayer in receipt of a transferred credit must carry it forward for use in future years as is the case with the original transferor taxpayer. While § 58.1-513(C) permits the transfer of unused tax credit amounts, the limitations applicable to individual taxpayers in § 58.1-512(B.1) remain unchanged. Therefore, an individual taxpayer continues to be limited by the \$600,000 amount (\$100,000 per year for a period of six years).¹² For example, a person donating land valued at \$1,800,000 for conservation purposes in 2002 would be allowed a tax credit of \$900,000. Assuming that he will have a tax liability of at least

\$100,000 each year for the years 2002 through 2007, he could use \$600,000 of his tax credit to offset his state income tax liability. In addition, he could transfer \$300,000 to another taxpayer. The taxpayer transferee would still be subject to the \$100,000 per year limit contained in § 58.1-512(B.1).

Finally, you inquire as to the meaning of the term "taxpayer," as that term is used in § 58.1-513(C). For the purposes of § 58.1-513(C), the term "taxpayer" means "every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of this Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth."¹³ Any person, corporation, partnership, organization, trust or estate falling into these categories could hold and transfer a tax credit. For example, a nonprofit corporation subject to sales tax, but not income tax, may transfer its credit to a taxpayer subject to income tax.

Conclusion

It is my opinion that § 58.1-512(A) allows a credit against individual and corporate income tax in an amount equal to fifty percent of the fair market value of any land or interest in land donated for conservation purposes. It is further my opinion that the donor of the land or interest in land may transfer such credit to other taxpayers in order to utilize fully the tax credit. Each individual taxpayer receiving a transferred credit is subject to the provisions of § 58.1-512(B.1). Finally, the term "taxpayer," for purposes of § 58.1-513(C), means that any person, corporation, partnership, organization, trust, or estate subject to state or local taxation may hold and transfer the land conservation tax credit. Only those taxpayers subject to state income taxes, however, may benefit from actual use of the tax credit to offset a tax liability.

¹Va. Code Ann. tit. 58.1, ch. 3, art. 20.1, §§ 58.1-510 to 58.1-513 (Michie Repl. Vol. 2000 & Supp. 2002).

²Section 58.1-510 (Michie Repl. Vol. 2000).

³Section 58.1-512(A) (Michie Repl. Vol. 2000).

⁴See § 58.1-512(B.1) (Michie Repl. Vol. 2000).

⁵*Id.*

⁶See 2 Va. Tax Rep. (CCH) ¶ 204-025, at 15,623 (May 30, 2000).

⁷See *supra* note . A taxpayer holding a credit pursuant to the Virginia Land Conservation Incentives Act of 1999 is one that has properly received the tax credit as a result of donating land or an interest in land or is in the chain that has received the credit from the original source.

⁸2002 Va. Acts ch. 347, at 423 (codified as amended at § 58.1-513(C)).

⁹See *Loudoun Co. Dept. Soc. Serv. v. Etzold*, 245 Va. 80, 85, 425 S.E.2d 800, 802 (1993).

¹⁰*Stein v. Commonwealth*, 12 Va. App. 65, 69, 402 S.E.2d 238, 241 (1991).

¹¹*Merriam Webster's Collegiate Dictionary* 1301 (1996).

¹²Section 58.1-512(B.1). The donor of the land or interest in land may not directly benefit from more than \$600,000 of the credit amount.

¹³Section 58.1-1 defines the term "taxpayer" as used in Title 58.1.
