

Rulings of the Tax Commissioner

Document Number: 03-12
Tax Type: Individual Income Tax
Brief Description: Virginia Land Preservation Tax Credits.
Topics: Credits
Date Issued: 02/27/2003

February 27, 2003

Re: Request for Ruling: Individual Income Tax

Dear *****:

This is in reply to your letter of January 29, 2003, concerning the Virginia Land Preservation Tax Credits.

FACTS

You have clients who wish to transfer Virginia Land Preservation Tax Credits for land, or interests in land located in Virginia that has been donated to public or private conservation agencies. You contend that you see no basis in the statute to limit the taxable year that this credit may be claimed to the taxable year in which it is transferred. Additionally, you contend that the statute does not impose a restriction on the number or times a credit may be transferred. You are requesting that the Department clarify its position on these two issues concerning this credit.

RULING

Code of Virginia § 58.1-510 et seq. pertains to the Virginia Land Conservation Incentives Act of 1999 (the "Act"). The Land Preservation Tax Credit authorized under this Act provides an income tax credit for taxpayers that donate land or an interest in land to public or private conservation agencies for conservation and preservation purposes. The credit is equal to 50% of the "fair market value" of the qualified donation, which must be substantiated by a qualified appraisal that is prepared by a qualified appraiser.

Concerning the transfer of credits under this Act, *Code of Virginia* § 58.1-513(C), provides that:

Any taxpayer holding a credit under this article 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 in accordance with procedures and forms prescribed by the Tax Commissioner.

As a result, any taxpayer holding a credit may transfer unused portions of that credit to another taxpayer for use on their Virginia income tax return.

When Transferred, Taxable Year in which the Transfer Occurred

Determines when Credit may be Claimed

While you contend that you see no basis in the statute to limit the taxable year that this credit may be claimed to the taxable year in which it is transferred, *Code of Virginia* § 58.1-510 et seq. is silent on this matter. Unless otherwise provided by law, tax credits and payments are typically allowed as a credit against the tax liability in the taxable year they are earned or paid. It is clear that any credit transferred during a taxable year may be claimed as a credit on the tax return of the transferee in the taxable year that the transfer of the credit occurs. Consequently, absent any statutory provision expressly allowing the taxpayer transferee to claim the credit for a taxable year prior to the taxable year in which it was acquired, a credit that is transferred may not be carried back to the prior taxable year, even if it is acquired prior to the original due date of the return for the prior taxable year.

Successive Transfers of the same Credit Permitted

The second issue concerns whether the statute imposes a restriction on the

number or times a credit may be transferred. An opinion written by the Office of the Attorney General dated November 19, 2002, addressed the Virginia Land Conservation Incentives Act of 1999. Concerning the meaning of the phrase, "A taxpayer holding a ,

credit," a footnote in the opinion indicated that.

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. (Emphasis added.)

The Department is in agreement with this statement. A transferee would be considered "holding" a credit if he were transferred the credit from the taxpayer that made the original donation of the land or interest in land. Likewise, any subsequent taxpayer in the chain of persons being transferred a portion of that credit would also be considered to be "holding" a credit. Consequently, as a holder of the credit, any subsequent transferees would be eligible to transfer any unused, but otherwise allowable credit, to another taxpayer.

In order for the transfer of a credit to be valid, the taxpayer transferring the credit must file a notification of the transfer with the Department in accordance with the procedures and forms prescribed with the Tax Commissioner. The Department is in the process of completing the design and production of this notification form, which should be available shortly.

The Code of Virginia section cited has been included for reference purposes. This and other reference documents are available online in the Tax Policy Library section of the Department's web site, located at www.tax.state.va.us. If you have any questions regarding this determination, you may contact ***** at *****.

Sincerely,

Kenneth W. Thorson
Tax Commissioner

PD/44658N
