

Rulings of the Tax Commissioner

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Tax Type: Individual Income Tax
Brief Description: Virginia Land Preservation Tax Credits.
Topics: Credits
Date Issued: 03/04/2003

March 4, 2003

Re: Request for Ruling: Individual Income Tax

Dear *****:

This is in reply to your letter of January 27, 2003, concerning the transfer of Virginia Land Preservation Tax Credits.

FACTS

You have clients with Virginia Land Preservation Tax Credits for land, or interest in land located in Virginia that has been donated to public or private conservation agencies. These clients are interested in transferring unused portions of these credits to other persons who would claim these credits on their income tax returns. You contend that the credit transferred after the close of the taxable year but prior to the original due date of the return for the taxable year may be claimed by the transferee as a credit on the income tax return for the taxable year prior to the transfer rather than the taxable year in which the transfer actually occurred. You are requesting clarification on this matter.

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, taxpayers holding credits may transfer unused portions of that credit to another taxpayer for use on their Virginia income tax return. While you contend that it is possible to acquire the transferred credit after the close of the taxable year but prior to the original due date of the return and still claim the credit for the taxable year, *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.

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

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