

Rulings of the Tax Commissioner

Document Number: 03-55
Tax Type: Individual Income Tax
Brief Description: Virginia Land Conservation Incentives Act of 1999
Topics: Credits
Date Issued: 08/07/2003

Supersedes PD's 99-293 and 02-97

August 7, 2003

Re: Request for Reconsideration: Individual Income Tax

Dear *****:

This will reply to your letter in which you request a clarification of the issues discussed in Public Document ("P.D.") 02-97 (06/25/02) regarding the Virginia Land Conservation Incentives Act of 1999 (the "Act"). I apologize for the delay in the Department's response.

FACTS

In P.D. 02-97, an organization requested a ruling as to whether taxpayers that donate land to the organization would qualify for the income tax credit provided by the Act. The organization was formed to create an endowment to hold and administer conservation easements that secure fragile lands from development and provide funding for future conservation programs. The ruling issued by the Department stated that, based on documentation provided by the organization, donations of qualified land to the organization would not qualify for the Land Preservation Tax Credit provided under *Va. Code* § 58.1-512.

You indicate that this ruling may be misleading as to the types of organizations eligible to receive land donated under the Act. Believing the Department's ruling concludes that donations would qualify for the income tax credit provided under the Act only if the donee is a private foundation, you consider the ruling to be contrary to the intent of the Act and request that the Department clarify its position.

RULING

The Act, codified at *Va. Code* § 58.1-510, et al., provides a credit for 50% of the value of real property or an interest in real property donated to an eligible charitable organization or instrumentality of the Commonwealth for qualifying land conservation purposes. In order to qualify for the credit, a donation of land must qualify as a charitable deduction under Internal Revenue Code ("IRC") § 170(h). This section of the IRC requires that each contribution of a qualified real property interest be made exclusively for conservation purposes to a qualified organization. See *Va. Code* § 58.1-512(B)(2).

The Act further requires that the donee organization must be the Commonwealth of Virginia, an instrumentality of the Commonwealth, or a qualified charitable organization. To be a qualified charitable organization for purposes of this credit, the organization must be a tax-exempt organization under the provisions of IRC § 501(c)(3). Further, the organization must also meet the requirements set forth under IRC § 509(a)(2), or meet the requirements of IRC § 509(a)(3) and be controlled by a § 509(a)(2) organization. See *Va. Code* § 58.1-512(B)(3).

P.D. 02-97 states, "the organization must also be classified as a private foundation under IRC § 509(a)(2)" IRC § 509 sets out the definition and rules governing private foundations for federal income tax purposes. With regard to IRC § 509, the term "private foundation" is described, in part, as being an organization that is not an organization described under IRC § 509(a)(2). As such, the use of the term "private foundation" was improperly used in P.D. 02-97 and P.D. 99-293 (11/12/99) in referencing the section of the IRC being cited. It was not the intent of the Department to go beyond the statutory requirements for organizations eligible to receive property for purposes of the Land Preservation Tax Credit.

Accordingly, P.D. 02-97 and P.D. 99-293 are hereby clarified and revised to the extent that they conclude that the donee organization must be a private foundation in order to be considered a charitable organization for purposes of the Land Preservation Tax Credit provided under *Va. Code* § 58.1-512. Qualified donations to a charitable organization that is not a private foundation are eligible for the credit, assuming all other requirements established under *Va. Code* § 58.1-512 are satisfied.

This analysis and clarification do not, however, change the Department's conclusion concerning the organization at issue in P.D. 02-97. The organization did not provide information showing that it met the requirements set forth in *Va. Code* §

58.1-512. Consequently, the Department could not determine that donations of qualified land to that organization qualified for the Land Preservation Tax Credit.

Copies of the *Code of Virginia* sections cited, along with other reference documents, are available on-line in the Tax Policy Library section of the Department of Taxation's web site, located at www.tax.state.va.us. If you have any additional questions regarding this ruling, please contact ***** in the Office of Policy and Administration, Appeals and Rulings, at *****.

Sincerely,

Kenneth W. Thorson
Tax Commissioner

AR/42666E

Related Policy Documents: PD 99-293, PD 02-97