

Rulings of the Tax Commissioner

Document Number: 03-77
Tax Type: Individual Income Tax
Brief Description: Virginia Land Conservation Incentives Act of 1999
Topics: Credits
Date Issued: 10/31/2003

October 31, 2003

Re: Request for Ruling: Individual Income Tax

Dear *****:

This will reply to your letter in which you request a ruling regarding the Virginia Land Conservation Incentives Act of 1999 (the "Act").

FACTS

A Virginia resident (the "Taxpayer") owns a parcel of real property in Virginia. During 2002, the Taxpayer made a qualified donation of a perpetual land preservation easement. For purposes of this ruling, it is assumed that the conveyance of the easement on the property qualified for the land preservation tax credit (the "Credit") provided under *Va. Code* § 58.1-512. The Taxpayer contemplates transferring portions of the tax credit to one or more Virginia taxpayers in 2003 and thereafter pursuant to *Va. Code* § 58.1-513(C).

Given this scenario, you present two questions: (1) Is the amount of the Credit available to the Taxpayer under *Va. Code* § 58.1-612, either for use by the Taxpayer directly, or for transfer to or use by transferees, dependent upon the amount allowed as a federal itemized deduction for charitable donations on the Taxpayer's federal income tax return? (2) Is the Credit for use by the Taxpayer directly, or for transfer to or use by transferees, fixed as of the date that the requirements of *Va. Code* § 58.1-512 are satisfied?

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 an interest in real property 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).

Credit and federal itemized deduction for charitable donations

Under IRC § 170, the amount of the itemized deduction allowed may be limited to a percentage of a taxpayer's adjusted gross income. Unused deductions may be carried over for up to five years.

Virginia Code § 58.1-512(B)(2) and IRC § 170(h) define the type of real property interest that would qualify for the Credit. As such, the Credit is not dependent upon the amount allowed as a federal itemized deduction for charitable donation on the Taxpayer's federal return.

Amount of Credit available

When the requirements of *Va. Code* § 58.1-512 are satisfied, the Credit is earned, the value of the Credit is determined, and the Taxpayer is eligible to claim or start claiming the Credit on that taxable year's income tax return.

The Department, however, retains the authority to investigate any books and records of a taxpayer in order to ascertain the proper tax liability. See *Va. Code* § 58.1-219. In addition, *Va. Code* § 58.1-311 requires a taxpayer audited by the Internal Revenue Service ("IRS") to file an amended return and report the changes to the Department within 90 days of the final determination of the change. Further, under *Va. Code* § 58.1-1823, a taxpayer has three years from the last day prescribed by law for the timely filing of the return, or one year from the final determination of a federal change or correction to file an amended return to request a refund. If such amended returns are not filed, the Department may make an assessment of additional tax based on the federal adjustments at any time pursuant to *Va. Code* § 58.1-312. If, for example, the Department receives information concerning an audit by the IRS or otherwise determines that the appraised value of the property or the donation did not qualify as a charitable deduction under IRC § 170, or the donation was not made to the Commonwealth or a qualified charitable organization, the Credit and a taxpayer's resulting liability will be adjusted accordingly.

As such, the Credit could be adjusted at any time within the statute of limitations. Generally, additional tax, penalty, and interest must be assessed within three years from the last day prescribed by law for the timely filing of the return pursuant to *Va. Code* § 58.1-104. There are, however, a number of exceptions to this general rule under *Va. Code* § 58.1-312 that authorize the Department to assess additional income tax, penalty, and interest without a limitation of time.

Code of Virginia § 58.1-512(B)(1) provides that any portion of the Credit that is unused in one taxable year may be carried over for a maximum of five succeeding taxable years. As such, if a taxpayer earns the Credit for a qualified donation made in the 2002 taxable year, such taxpayer could carry, unused amounts of the Credit forward through the 2007 taxable year. If the taxpayer does, in fact, claim a portion of the Credit on the income tax return for the 2007 taxable year, the Department would be able to adjust the Credit at any time within the statute of limitations for the 2002 through 2007 taxable years. The Department would also be limited to assessing additional tax resulting from such adjustments by the applicable statute of limitations.

Because the transferees would be subject to the credit amount and carryforward limitations as provided under *Va. Code* § 58.1-512(B)(1), the Attorney General has ruled that the limitations applicable to taxpayers by *Va. Code* § 58.1-512(B)(1) also apply to transferees of the Credit. See Opinion of the Attorney General 02-094 (11/19/02). The Credit claimed by a transferee of the Credit could be affected by any adjustment by the Department to the Credit earned by a transferring taxpayer. Accordingly, if the Department adjusts the Credit claimed by a taxpayer within the statute of limitations, such adjustment would flow through to any transferee of the Credit.

I trust that this ruling answers your questions. 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/47091B
