

Rulings of the Tax Commissioner

Document Number: 04-119
Tax Type: Individual Income Tax
Brief Description: Virginia Land Conservation Incentives Act of 1999
Topics: Credits
Date Issued: 09/15/2004

September 15, 2004

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"). I apologize for the delay in this response.

FACTS

During 2002, a Virginia resident (the "Taxpayer") made a qualified donation of a perpetual land preservation easement. For purposes of this ruling, it is assumed, without deciding, that the conveyance of the easement on the property qualified for the land preservation tax credit (the "Credit"). The easement has an appraised fair market value of \$4 million. For purposes of this ruling, it is assumed that the Taxpayer claimed \$25,000 of the Credit on his 2002 Virginia individual income tax return. The Taxpayer contemplates transferring interests in the Credit to one or more unrelated Virginia taxpayers in 2003 and thereafter pursuant to *Va. Code* § 58.1-513(C).

Given this scenario, you present three questions: (1) Can the Taxpayer transfer all of his unusable but otherwise allowable Credit to multiple individual and corporate income taxpayers? (2) Assuming the answer to #1 is yes, how do the annual Credit amount and carryforward limitations apply to a transferee?

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. *Virginia Code* § 58.1-513(C) permits a taxpayer that earns the Credit to transfer all or a portion of such Credit to another corporate or individual income taxpayer and provides a subtraction for any gain or income recognized by the taxpayer as a result of the transfer of the Credit.

Transfer of the Credit

Virginia Code § 58.1-512(A) provides that "there shall be allowed as a credit ... an amount equal to 50% of the fair market value of any land or interest in land located in Virginia" conveyed for the land conservation purposes. (Emphasis added.)

Virginia Code § 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.) This section further allows any portion of the Credit that is unused in a taxable year to be carried forward for up to five succeeding taxable years from the taxable year the Credit originated.

Virginia Code § 58.1-512(A) provides the mechanism to calculate the amount of the total "allowable credit" earned by a taxpayer, while *Va. Code* § 58.1-512(B)(1) limits the amount of the Credit that the taxpayer may claim to offset his income tax liability. Under *Va. Code* § 58.1-512(B)(1), the maximum Credit that could be claimed by any one taxpayer would be \$600,000 (\$100,000 per year for six taxable years).

The term "unused but otherwise allowable credit" in *Va. Code* § 58.1-513(C) refers to the total amount allowed under *Va. Code* § 58.1-512(A) that is not claimed on an income tax return by a taxpayer holding the Credit. In other words, the "unused but otherwise allowable credit" is 50% of the fair market value of the donated land or interest in land less amounts claimed on an income tax return by the taxpayer entitled to the Credit. A taxpayer may transfer any portion of the Credit, as computed under *Va. Code* § 58.1-512, not used in any one taxable year over the course of six taxable years.

Virginia Code § 58.1-513(C) permits the transfer of the amount of "unused but otherwise allowable credit for use by another taxpayer." This statute neither expressly permits nor prohibits the transfer of the Credit from one taxpayer to more than one taxpayer. Because the amount of allowable credit may exceed the maximum amount that may be claimed or used by one taxpayer, a taxpayer could

earn a Credit that exceeds the amount that a potential transferee could use. While the Act does limit the amount of the Credit that may be used in a given taxable year, these limits are not intended to restrict taxpayers from using the full amount of the Credit earned. Accordingly, a taxpayer holding an unused amount of the Credit may transfer portions of such Credit to more than one taxpayer.

Limitations Imposed on Transferee

With regard to your second question concerning the annual Credit limitation and carryforward period, 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). As such, transferees will be subject to the credit amount and carryforward limitations as provided under *Va. Code* § 58.1-512(B)(1).

When a transferee receives a Credit resulting from a transfer, the transferee becomes a taxpayer for purposes of claiming the Credit. As such, the amount of the Credit that may be claimed by a transferee cannot exceed \$100,000 for a given taxable year.

Further, *Va. Code* § 58.1-512(B)(1) provides a carryforward period limited to the five taxable years immediately succeeding the taxable year in which the Credit "originated." The Department interprets the term "originated" to be the taxable year in which the Credit is earned. In other words, the carryforward period begins with the taxable year following the taxable year in which a qualified donation is made. As such, the transferee will inherit the carryforward period remaining as if the transferee had made the qualified donation.

In the scenario presented, the Taxpayer made a qualified donation in 2002, and the property had an appraised fair market value of \$4 million. As such, the Credit amount earned during the 2002 taxable year is \$2 million. If the Taxpayer claimed \$25,000 of the Credit on his 2002 Virginia individual income tax return, the Taxpayer may transfer up to \$1,975,000 of Credit to other taxpayers. Each transferee would be limited to claiming a maximum of \$100,000 of the Credit per taxable year through the 2007 taxable year. Accordingly, the maximum cumulative benefit for a transferee receiving a Credit in the 2003 taxable year would be \$500,000 (\$100,000 for each taxable year beginning with the 2003 taxable year through the 2007 taxable year).

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/47075B

COMMONWEALTH of VIRGINIA
Department of Taxation

TO WHOM IT MAY CONCERN:

Under the authority of §§ 58.1-1 and 58.1-110 of the Code of Virginia, I hereby delegate to Gerald Gwaltney, Deputy Tax Commissioner, the authority to sign for me, in my absence, any and all documents, including, but not limited to, affidavits, warrants, rulings, appeals, offers in compromise and sales tax revocations.

This authority shall not extend to matters or documents related to my service on any statutorily created board or commission, including, but not limited to, the Compensation Board and Treasury Board.

This authority shall become effective January 10, 2003, and shall remain in effect until revoked.

Done at Richmond, Virginia, this 13th day of January 2003.

Kenneth W. Thorson
Tax Commissioner

Acknowledgement: Gerald H. Gwaltney Date:

Done this 13th day of January 2003 in the City of Richmond, State of Virginia. My Commission expires 9-30-2003.

Notary Public: Sylvia J. Wesson Notary Seal
