

Rulings of the Tax Commissioner

Document Number: 04-182
Tax Type: Virginia Land Preservation Tax Credit
Brief Description: Transfers for unused portions of the Credit earned pursuant to qualified donations
Topics: Land Preservation Tax Credit
Date Issued: 10/07/2004

October 7, 2004

Re: Request for Ruling: Virginia Land Preservation Tax Credit

Dear *****:

This is in response to your letter in which you request a ruling on behalf of your client (the "Taxpayer") concerning the transfer of Virginia Land Preservation Tax Credits (the "Credit"). I apologize for the delay in the Department's response.

FACTS

The Taxpayer made a qualifying donation in taxable year 2000 to the Virginia Land Trust for which he earned a Credit. In December 2002, the Taxpayer entered into an agreement to transfer \$50,000 of the Credit and received remuneration for the transferred credits. You ask if the Credit derived from a donation made in taxable year 2000 is eligible for transfer and allowable on the recipient's 2002 Virginia income tax return.

RULING

Virginia Code § 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 Credit under this Act, *Va. Code* § 58.1-513 C provides that a taxpayer carrying a Credit may transfer unused but otherwise allowable Credit to another taxpayer. Notification of such a transfer must be made to the Department through a prescribed procedure and form.

In 2002, the General Assembly amended *Va. Code* § 58.1-513 to add Subsection C. See Chapter 347 of the 2002 *Acts of Assembly*. This Chapter contains two enactment clauses. In addition to the first enactment clause that amended *Va. Code* § 58.1-513 by adding subsections C through E, the Chapter includes a second enactment clause that states, "the provisions of this act shall be effective for qualified donations made during taxable years beginning on or after January 1, 2002."

The statute is clear in regards to this matter. Transfers can only be made for unused portions of the Credit earned pursuant to qualified donations made during taxable years beginning on or after January 1, 2002. As such, the Credit earned by the Taxpayer in 2000 may not be transferred.

You argue that the *Code of Virginia* does not have any dates or inferences as to the effective date of *Va. Code* § 58.1-513 C. You aver that the Governor and the General Assembly changed 2002 House Bill 1322 prior to passage and enactment. As noted earlier, however, the 2002 *Acts of Assembly*, which records the actions of the General Assembly, includes the second enactment clause. Accordingly, the legislative intent is clear.

You may be interested to know that *Va. Code* § 30-146 charges the Virginia Code Commission with the responsibility for publishing and maintaining the *Code of Virginia* in both annotated and unannotated versions. The second enactment clause is explained in the annotated version of the *Code of Virginia*. The unannotated version of the *Code of Virginia* sets forth § 58.1-513, as amended, but does not include annotations, enactment clauses or other editorial comments. Evidently, you are referring to an unannotated version of the *Code of Virginia*.

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

Sincerely,

Kenneth W. Thorson
Tax Commissioner

AR/46440E
