

Rulings of the Tax Commissioner

Document Number: 05-125
Tax Type: Corporation Income Tax
Brief Description: Land Preservation Tax Credit
Topics: Credits
Date Issued: 07/26/2005

July 26, 2005

Re: Ruling Request: Land Preservation Tax Credit

Dear *****:

This is in response to your letter of May 4, 2004, in which you requested a ruling on the Land Preservation Tax Credit (the "Credit") for the ***** (the "Taxpayer"). I apologize for the delay in this response.

FACTS

The Taxpayer is a § 501(c)(3) corporation under the Internal Revenue Code. According to its Certificate of Incorporation, the purposes of the Taxpayer are to maintain and operate museums, parks and places of historical interest in Virginia; to promote and further the spiritual, mental, moral and cultural welfare of the people of Virginia; and to make voluntary donations to corporations, trusts or foundations or other organizations which are organized and operated exclusively for charitable, scientific, literary, education or other benevolent purposes. The Taxpayer is not eligible to hold conservation easements.

The Taxpayer currently owns three tracts of land in Virginia. The Taxpayer would like to give an open-space easement on two of these properties to an organization eligible to hold a conservation easement. The Taxpayer would like to earn Land Preservation Tax Credits from this gift and then sell these credits.

You are writing first to inquire whether the Taxpayer meets the requirements to be considered a taxpayer under the Virginia Land Conservation Incentives Act of 1999

(the "Act"). You also ask if the proposed donation by the Taxpayer would qualify for Land Preservation Tax Credits and, if so, whether the Taxpayer may transfer or sell any credits that are earned.

RULING

In order to qualify for Land Preservation Tax Credits, a donation of land must be made by a "landowner/taxpayer." *Va. Code* § 58.1-512 A. Section 58.1-1 of the Code defines the term "taxpayer" as "every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of the Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth." In addition, the Attorney General has addressed the specific situation of eligibility under the Land Preservation Tax Credit. A November 2002 Opinion of the Attorney General states, "[a]ny person, corporation, partnership, organization, trust or estate falling into these categories could hold and transfer a tax credit. For example, a nonprofit corporation subject to sales tax, but not income tax, may transfer its credit to a taxpayer subject to income tax." Opinion of the Attorney General 02-094 (11/19/02).

The example offered by the Opinion of the Attorney General would seem to cover this situation. The Taxpayer is a nonprofit organization and is exempt from income taxes. The Taxpayer states, however, that it is subject to the retail sales and use tax and all state employer taxes. Thus, the Taxpayer would be considered a taxpayer for the purposes of the Act.

While the Taxpayer is an eligible taxpayer, it still must make a qualified donation in order to be eligible for Land Preservation Tax Credits. Under the Code, qualified donations include "the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code" *Va. Code* 58.1-512 B 2. This section of the IRC requires among other things, that each contribution of a qualified real property interest be made exclusively for conservation purposes to a qualified organization. One such conservation purpose is for "the preservation of open space" IRC § 170(h)(4)(A)(iii).

The Taxpayer intends to donate an open-space easement for approximately one thousand fifty-two acres of land in two separate parcels to an organization eligible

to hold a conservation easement. So long as this conveyance is in perpetuity and all of the other criteria of the Act and of IRC § 170(h) and its regulations are met, it appears that this donation would qualify for Land Preservation Tax Credits.

Please note that this outcome would be different if the Taxpayer itself was eligible to hold the conservation easement. This is because the purpose of the Act would be accomplished once ownership of the land is held by a conservation agency that is able ensure that the land is preserved. Any subsequent transfer of the land, or any interest in the land, to a similarly qualified organization would be redundant and would merely be done to gain tax credits. Because transferring land or an interest in land to obtain credits does not qualify as an approved purpose under the Act, Land Preservation Tax Credits would not be granted in that situation.

Finally, *Va. Code* § 58.1-513 C provides that, "[a]ny taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns." Because the Taxpayer would obtain credits from its donation of land, it would hold credits that it could then transfer or sell. The only restriction on this is that the credits must be transferred or sold to another taxpayer who may actually use the credits on a Virginia income tax return. Thus, transferring or selling the credit to another nonprofit agency is not allowed.

I trust that this reply answers your ruling request. Copies of the Code of Virginia sections cited are included for reference purposes. These and other reference documents are also available on-line in the Tax Policy Library section of the Department of Taxation's web site located at www.tax.virginia.gov. If you should have any questions regarding this ruling, you may contact ***** in the Office of Policy and Administration, Policy Development, at *****.

Sincerely,

Kenneth W. Thorson
Tax Commissioner

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.

Sylvia J. Wesson
Notary Public Notary Seal
