

Rulings of the Tax Commissioner

Document Number: 05-136
Tax Type: Individual Income Tax
Brief Description: Land Preservation Tax Credits
Topics: Credits
Date Issued: 08/10/2005

August 10, 2005

Re: Request for Ruling: Individual Income Tax

Dear *****:

This will reply to your letter concerning the transfer of Land Preservation Tax Credits. I apologize for the delay in responding to your letter.

FACTS

You inquire whether spouses filing a joint Virginia return can each claim up to \$100,000 for purchased Land Preservation Tax Credits against their joint tax liability if they purchase the credits separately. If each spouse cannot claim the credit on the joint return, you wish to know if each spouse can claim the \$100,000 credit on a separate return. Lastly, you ask if a taxpayer filing a Virginia nonresident income tax return can claim up to \$100,000 of purchased Land Preservation Tax Credits against his or her nonresident tax on Virginia source income.

RULING

The Virginia Land Conservation Incentives Act of 1999 (the "Act") is found in *Va. Code* § 58.1-510 *et seq.* The Land Preservation Tax Credit authorized under this Act provides an income tax credit for taxpayers who donate land or an interest in land to public or private conservation agencies for conservation or preservation purposes. The credit is equal to fifty percent of the fair market value of the qualified donation, which must be substantiated by a qualified appraisal prepared by a

qualified appraiser.

The transfer of credits under this Act is governed by *Va. Code* § 58.1-513 C, which provides:

Any taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

Thus, a taxpayer to whom a Land Preservation Credit has been transferred may claim that credit on his or her Virginia income tax return beginning in the taxable year that the transfer of the credit occurs.

In your inquiry, two spouses plan to purchase separate Land Preservation Credits and then file a joint Virginia income tax return. Each spouse, as a transferee of the credit, is eligible to claim up to \$100,000 on the joint Virginia tax return, for a total of up to \$200,000, assuming that the purchase was made for the taxable year 2002 or thereafter. See *Va. Code* § 58.1-512 B 1. Additionally, if these spouses elect to file separate Virginia returns, they will be eligible to claim \$100,000 each on their respective returns.

The answer to this question would differ had only one spouse purchased the entire amount of the Credits. Land Preservation Tax Credits may only be earned by the "landowner/taxpayer." *Va. Code* § 58.1-512 A. The Credits may then be used by that taxpayer or transferred to "another taxpayer." *Va. Code* § 58.1-513 C. Only those who actually earn or purchase credits may use such credits, and those persons are then subject to the restrictions described in *Va. Code* § 58.1-512 B 1. Thus, had only one spouse purchased \$200,000 of Land Preservation Tax Credits, the total amount that such person could claim on a tax return, whether joint or separate, would be \$100,000.

Finally, you inquire whether a taxpayer can claim the Land Preservation Credit on the Virginia nonresident income tax return. As stated in *Va. Code* § 58.1-513 C, the Land Preservation Credit may be transferred to "another taxpayer." Because the statute does not place any words of limitation on the term "another taxpayer," the

transferee may be an individual who is a nonresident of Virginia. Accordingly, to the extent that the nonresident taxpayer has been transferred a Land Preservation Credit pursuant to the Act, the nonresident may claim this credit on the Virginia nonresident income tax return. In the situation you described, the nonresident taxpayer may claim up to \$100,000 of purchased Land Preservation Tax Credit against the tax calculated on the Virginia nonresident income tax return.

The cited Virginia Code sections and other reference documents are available on-line in the Tax Policy Library section of the Department's website, located at www.tax.virginia.gov. If you have any questions regarding this ruling, you may contact ***** at *****.

Sincerely,

Kenneth W. Thorson
Tax Commissioner

PD/48436
