

# Rulings of the Tax Commissioner

**Document Number:** 05-170  
**Tax Type:** Fiduciary Income Tax; Individual Income Tax  
**Brief Description:** Land Preservation Tax Credit  
**Topics:** Credits  
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December 5, 2005

Re: Ruling Request: Land Preservation Tax Credit

Dear \*\*\*\*\*:

This is in response to your e-mail of March 16, 2005, in which you requested a ruling regarding the Land Preservation Tax Credit (the "Credit").

## FACTS

During 2004, A (the "Taxpayer") and B, a husband and wife owning property as tenants in common, made a donation of land that was duly recorded. It is assumed that this was a qualified donation under *Va. Code* § 58.1-512 B 2 and that it generated Land Preservation Tax Credits. Later in 2004, the Taxpayer passed away. Under the terms of his will, his share of the real estate will be distributed to a revocable trust.

You inquire whether the Taxpayer's portion of the charitable donation and tax credit ends with his death. If it does not, you ask whether his share of the donation can be included in the trust assets and claimed on federal fiduciary income tax returns as a charitable contribution and on the state level as a tax credit for the five additional years following the year of donation until the credit is used or sold.

The question whether the Taxpayer's portion of the donation may be claimed on the federal fiduciary income tax return as a charitable deduction is a federal issue and will not be addressed in this ruling. Please note, however, that Virginia conforms to the charitable deduction allowable for each tax return filed by or for the taxpayer, his spouse, and any fiduciary entity.

## RULING

In general, a taxpayer does not have a right to any tax credit. "Credits, deductions or exemptions allowed in the computation of an income tax are privileges accorded as a matter of legislative grace and not as a matter of taxpayer right." Public Document ("P.D.") 02-108 (7/1/02). See also Deputy v. duPont, 308 U.S. 488 (1940). Because of this, in most instances, tax credits are personal to the taxpayer and do not survive him or her.

Unlike most other credits, the Land Preservation Tax Credit is transferable. *Va. Code* § 58.1-513 C provides that:

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, any taxpayer holding Land Preservation Tax Credits may transfer unused but otherwise allowable credits to another taxpayer for use on that taxpayer's Virginia income tax return. The transferring taxpayer is then required to file a notification with the Department.

In this case, because the donation was made by the Taxpayer before his death, the Credit would be claimed on the final income tax return of the Taxpayer. Any amount of the Credit that was not usable on that return would have been available for carryover, had the taxpayer lived.

This carryover amount may not, however, be transferred according to the terms of the Taxpayer's will. This is because *Va. Code* § 58.1-513 C requires lifetime acts on the part of a taxpayer who wishes to transfer a Credit. It is the taxpayer holding the Credit who must transfer it, and it is that transferring taxpayer who is required to file a notification with the Department after the transfer is completed. In this case, because the Taxpayer is deceased, he cannot perform either of these acts. Thus, any carryover amounts of the Credit were extinguished at the death of the Taxpayer.

I trust that this reply answers your ruling request. Copies of the *Code of Virginia* sections cited and 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.virginia.gov](http://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

PD/55028

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