

Rulings of the Tax Commissioner

Document Number: 05-66
Tax Type: Individual Income Tax
Brief Description: Land Preservation Tax Credit
Topics: Credits
Date Issued: 04/26/2005

April 26, 2005

Re: Ruling Request: Individual Income Tax

Dear *****:

This is in reply to your letter regarding the donation of land by a taxpayer to ***** (the "Taxpayer") in order to be eligible to claim a Land Preservation Tax Credit on the taxpayer's income tax return. I apologize for the delay in responding to your letter.

FACTS

The Taxpayer is exempt from taxation pursuant to Internal Revenue Code (the "IRC") § 501(c)(3). It is not a private foundation by virtue of IRC § 509(a)(2). The Taxpayer provides facilities for youth activities, such as baseball, softball, football and soccer. In order to support the population growth in its community, the Taxpayer wants to expand its athletic facilities and fields.

The Taxpayer plans to receive a donation of real property that would qualify as a charitable contribution pursuant to IRC § 170. The property will be donated in perpetuity and will be used for athletic fields. In addition, the property will be subject to a deed restriction that will perpetually prohibit use of the property for anything other than as "open space" as the term is used for the purposes of *Virginia Code* § 512(A). This restriction will allow only for the construction of permanent structures (concession stands, rest room facilities, and storage facilities for equipment) and temporary structures (bleachers and fencing) that support the "open space" nature of the real property. Finally, the Taxpayer will amend its

Articles of Incorporation in order to allow it to hold land for land conservation purposes.

The Taxpayer is requesting a ruling on whether the donation of the property would produce Land Preservation Tax Credits for the taxpayer who will donate the land.

RULING

You first inquire whether the Taxpayer qualifies as a "Private Conservation Agency." *Va. Code* § 58.1-511, which pertains to the Virginia Land Conservation Incentives Act of 1999 (the "Act"), provides, in part, that:

'Public or Private Conservation Agency' means any Virginia governmental body, or any private not-for-profit charitable corporation or trust authorized to do business in the Commonwealth and organized and operated for natural resources, land conservation or historic preservation purposes, and having tax-exempt status as a public charity under the U.S. Internal Revenue Code of 1986, as amended, and having the power to acquire, hold and maintain land and/or interests in land for such purposes. (Emphasis added.)

Additionally, *Va. Code* § 58.1-512(B)(3) provides that:

Qualified donations shall be eligible for the tax credit herein described if such donations are made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in § 501 (c) (3) of the U.S. Internal Revenue Code of 1986, as amended, if such charitable organization (i) meets the requirements of § 509 (a)(2) or ii meets the requirements of § 509 (a) (3) and is controlled by an organization described in § 509 (a)(2). (Emphasis added.)

Thus, in order to qualify, a private agency must be a not-for-profit charitable corporation or trust authorized to do business in the Commonwealth and must meet the other criteria set forth in *Va. Code* § 58.1-511. The organization must also have the power to acquire, hold, and maintain land or interest in land for conservation purposes. Additionally, such a charitable organization must meet the criteria of *Va. Code* § 58.1-512(B)(3), which excludes private foundations from

being considered private conservation agencies to which qualified donations may be given.

The Taxpayer does not meet the qualifications stated above at this time. However, when the Taxpayer amends its Articles of Incorporation to secure the authority to hold and maintain real property for conservation purposes, it appears that the Taxpayer will qualify as a Private Conservation Agency. Thus, donations of real property to the Taxpayer that meet the qualifications of the Act will qualify for the Land Preservation Tax Credit at that time.

Concerning the definition of "open space," *Virginia Code* § 58.1-510 provides that:

The purpose of this act is to supplement existing land conservation programs to further encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces and forested resources. (Emphasis added.)

The Act does not provide a specific definition for the term, "open spaces." However, *Va. Code* § 58.1-513(A) references *Va. Code* § 58.1-322. That section, in turn, discusses open-space use "as that term is defined in § 58.1-3230...." *Va. Code* § 58.1-322(C)(22). Finally, *Va. Code* § 58.1-3230 provides that:

'Real estate devoted to open-space use' shall mean real estate used as, or preserved for, (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands as defined in § 58.1-3666, (v) riparian buffers as defined in § 58.1-3666, (vi) historic or scenic purposes, or (vii) assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240, and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the local ordinance. (Emphasis added.)

Since this term, "open-space" is referenced in both *Va. Code* §§ 58.1-322(C)(22) and 58.1-513(A), the definition provided for "real estate devoted to open-space use" referred to in *Va. Code* § 58.1-3230 will likewise apply to both code sections.

As a result, the definition, "real estate devoted to open-space use" will be used to define the use of real property for open space that is identified in the Act. When such open-space property is donated to a private or public conservation agency and used for conservation or preservation purposes, the donor qualifies for the Land Preservation Credit.

However, we must still determine whether "real estate devoted to open-space use" includes parks and/or recreational facilities. Title 4 Virginia Administrative Code (VAC) 5-20-20, promulgated by the Department of Conservation and Recreation, discusses the specific standards used to determine whether real estate will qualify for special assessment based on open-space use. In part, this regulation provides that "park or recreation uses" include:

1. Any public, semi-public or privately owned park, playground or similar recreational area, for public or community use, except any use operated with intent for profit.

Examples: Parks, play areas, athletic fields, botanical gardens, fishing or skating ponds; golf clubs, country clubs, swimming clubs, beach clubs, yacht clubs, scout camps; fairgrounds.

2. Golf courses operated for profit as a public service and having the park--like characteristics normally associated with a country club.
3. Buildings shall not cover more than 10% of the site.
4. Commercial recreational or amusement places, such as driving ranges, miniature golf courses, pony rides, trap shoots, marinas, motor speedways, drag strips, amusement parks and the like, shall not qualify.

Real estate devoted to open-space use, therefore, may include recreational and park areas, such as athletic fields, used for sports, such as football, baseball, softball and soccer. However, no more than 10% of the site may be attributable to buildings. Additionally, representatives from the Department of Conservation and Recreation have indicated that the building of fences, bleachers and temporary structures would not prevent real property from qualifying as real estate devoted to open-space use. Consequently, real estate used for parks and recreation that

meets the specific standards set forth in 4 VAC 5-20-20 would be considered devoted to open-space use.

It is important to note that not only must a donation meet all of the requirements of the Act; it must also meet the requirements set forth in Internal Revenue Code (IRC) § 170(h). In this case, the recreational use that you are suggesting for this property will meet the "conservation purpose" criterion of IRC § 170(h), as required by the Act. One qualified definition of "conservation purpose" under the IRC is "the preservation of land areas for outdoor recreation by, or the education of, the general public." IRC § 170(h)(4)(A)(i). This would seem to encompass the suggested use as an athletic field.

I trust that this ruling answers your questions. 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.virginia.gov. If you have any additional questions regarding this ruling, please contact ***** in the Office of Policy and Administration, Policy Development, at *****.

Sincerely,

Kenneth W. Thorson
Tax Commissioner

PD/46437

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 9-30-03.

Sylvia Wesson
Notary Public Notary Seal
