

Rulings of the Tax Commissioner

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Tax Type: Individual Income Tax
Brief Description: Land Preservation Tax Credits
Topics: Credits
Date Issued: 05/19/2005

Superseded by 05-122

May 19, 2005

Re: Ruling Request: Individual Income Tax
Virginia Outdoors Foundation

Dear *****:

You requested a ruling on Land Preservation Tax Credits authorized under the Virginia Land Conservation Incentives Act of 1999 (the "Act"). You wish to know whether a ruling by the Internal Revenue Service that, for federal income tax purposes, a donation of a particular land conservation easement does not qualify as a deductible charitable donation under Internal Revenue Code ("IRC") § 170(h) would necessarily render the donation ineligible for tax credits under the Act.

FACTS

From 2002 through 2004, easements were donated to the Virginia Outdoors Foundation ("VOF"). On the basis of these easements, Land Preservation Tax Credits were granted to the donors. These easements lacked certain technical language that is required under IRC § 170(h) and the Treasury Regulations promulgated thereunder. Specifically, the easements from 2002:

1. Do not contain an extinguishment paragraph as required under Treasury Regulation § 1.170A-14(g)(6); and
2. The provisions providing for enforcement of the easement do not comply

with Treasury Regulation § 1.170A-14(g)(5)(ii).

In addition, the easements from 2002 through 2004 fail to comply with Treasury Regulation § 1.170A-14(g)(5)(ii) because:

1. Under most of the VOF easements, the landowner retained the right to build one or more dwellings on the protected property;
2. Those retained rights may impair the conservation interests associated with the property; and
3. Those rights generally are exercisable without prior notice to VOF.

At this time, the Internal Revenue Service has not ruled definitively on any of these issues.

You are writing to request that the Department of Taxation institute a policy that will allow Land Preservation Tax Credits to be maintained in spite of the fact that the credits are based on easements donated to VOF that do not contain the language described above. You ask that this policy remain in place even if the Internal Revenue Service disqualifies the easements under IRC § 170(h).

RULING

The Act, codified at *Va. Code* § 58.1-510, *et al.*, provides a credit equal to fifty percent of the value of real property, or an interest in real property, donated to an eligible charitable organization or instrumentality of the Commonwealth for eligible land conservation purposes. In order to qualify for the credit, a donation of an interest in real property must qualify as a charitable deduction under IRC § 170(h). See *Va. Code* §§ 58.1-511 and 58.1-512 B 2. This section of the IRC contains several requirements that must be met in order for an easement to be eligible for a charitable deduction, such as the ones discussed above.

You have requested that the Department disregard any findings made by the Internal Revenue Service pertaining to whether the easements granted to VOF qualify as charitable deductions under IRC § 170(h). Because the Act grants an income tax credit, however, it must be strictly construed. This means that an easement must qualify as a charitable deduction under IRC § 170(h). If the easement does not meet those requirements, it also does not meet the conditions established under the Act, and, therefore, the easement cannot qualify for the Land

Preservation Tax Credit. Thus, in this specific situation, if the Internal Revenue Service disallows a charitable deduction for the VOF easements, the statute requires the Department to similarly disallow Virginia Land Preservation Tax Credits. The statute provides no authority for the Department to allow an exception.

Moreover, the Department, in its own right, may disallow the credit, regardless of whether the IRS has acted to determine if the donation qualifies for a charitable deduction. As noted, the Virginia statute, *Va. Code* § 58.1-512 B 2, expressly incorporates IRC § 170(h) and its limitations into the requirements for eligibility to claim the Virginia credit. Unfortunately, for purposes of the Virginia land preservation tax credit, it is not now possible to cure the defects for the taxable year in which the donation was made by retroactively amending the documents. If, in the circumstances you present, the taxpayers have erroneously claimed a credit for prior tax years that is not allowed under Virginia law, they should promptly file amended returns to remove the credit taken and remit the additional tax owed.

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

Related Policy Documents: PD 05-122