

Rulings of the Tax Commissioner

Document Number: 06-36
Tax Type: Land Preservation Tax Credit
Brief Description: Conveyance meets many of the initial requirements to qualify for the Credit
Topics: Land Preservation Tax Credit
Date Issued: 04/03/2006

April 3, 2006

Re: Ruling Request: Land Preservation Tax Credit

This is in response to your letter of January 6, 2006, in which you requested a ruling regarding the Land Preservation Tax Credit (the "Credit") on behalf of ***** (the "Taxpayers").

FACTS

The Taxpayers have contracted to sell certain property to the Department of Conservation and Recreation ("DCR"). Language in the deed executed by the Taxpayers that was submitted to the Department of Taxation ("TAX") indicates that this property is being conveyed primarily so that it may be used by DAR as a state park.

The Taxpayers claim that this transaction is a bargain sale, consisting of part sale and part charitable contribution. No appraisals or other evidence as to the fair market value of the property have been submitted or reviewed. For purposes of this ruling TAX will assume, without deciding, that the fair market value is greater than the consideration, and that the Taxpayers intend to make a charitable donation with respect to the excess value. You ask if the charitable contribution portion of the bargain sale will qualify for the Land Preservation Tax Credit.

RULING

The Virginia Land Conservation Incentives Act of 1999 (the "Act"), codified at Va.

Code § 58.1-510, *et al.*, provides a credit for fifty percent of the fair market value of a qualified donation that is donated to an eligible charitable organization or instrumentality of the Commonwealth. *Virginia Code* § 58.1-512 A provides that such donations must be conveyed, "for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation in perpetuity" Qualified donations include conveyances of fee interests or those less-than-fee interests that qualify as charitable deductions under § 170(h) of the Internal Revenue Code.

Here, the Taxpayers plan to convey a fee simple interest in their property to DCR. Because this is a conveyance of a fee simple interest, to the extent that any portion of the conveyance qualifies as a charitable contribution under the bargain sale doctrine, that portion of the conveyance would meet the definition of a qualifying donation for the purposes of the Credit. Further, DCR, as a public conservation agency, would be a qualifying donee. The fact that the donation is a fee simple would also satisfy one of the perpetuity requirements and the requirement that the donation be unconditional.

While the conveyance meets many of the initial requirements to qualify for the Credit, it is also necessary that the donation satisfy the purpose requirement. In this case, the deed states, "WHEREAS, Grantor is making this Deed and the conveyance herein for the purpose of a state park and other incidental uses including agricultural and forestal use, open space, and as a natural resource" In addition, we have received assurance from DCR that the property in question is being acquired for a state park. As stated above, land conveyed for "the purpose of . . . open space . . . conservation" would qualify. *Va. Code* § 58.1-512 A. Real estate used for park or recreational purposes falls within the open space conservation purpose listed by the Act. See Public Document 05-66.

Simply conveying land or an interest in land for a proper purpose is not enough, however, to satisfy the purpose requirement. The Act also requires that the "preservation, agricultural preservation, historic preservation or similar use and purpose of such property shall be assured in perpetuity." *Va. Code* § 58.1-512 C 4. It has been argued that this perpetuity requirement does not apply to the conveyance of a fee simple because language in subsection C 4 is similar to language used to describe less-than-fee interests in subsection C 2. This argument is unpersuasive.

First, the inclusion of "or similar use" in the perpetuity requirement indicates an expansive application. Second, the General Assembly indicated that the primary purpose of the credit is conservation according to the title of the credit and the requirement in subsection A that a qualifying donation can only be made to a "public or private conservation agency eligible to hold such land and interest therein for conservation or preservation purposes." Third, the permanent preservation requirement in subsection C 4 applies to "such property" not to the qualified donation, interest in property or other defined interest. Thus, the underlying parcel of real estate, whether protected by a conservation easement or a fee simple conveyance to a conservation agency, must be protected in perpetuity. Moreover, it strains credulity to believe that the General Assembly intended to grant such a generous credit when the recipient of the donation would be free to develop the property, or sell it to a developer, after the conveyance. The restrictions regarding eligible donees and the perpetuity requirements clearly demonstrate the legislative intent to ensure that a credit is granted only when there is assurance that the conveyance will provide more than a temporary benefit to the citizens of the Commonwealth.

In this case, although the language in the deed indicates that the land is being donated for the purpose of creating a state park, there is no language or restriction in the deed that guarantees that this purpose will be assured in perpetuity. The statute, however, only requires that the purpose be "assured" in perpetuity, it does not require that the assurance be in the form of a restrictive covenant enforceable in the courts. Because we are not limited to the language of the deed, we may examine the facts and circumstances of the transaction to determine if there is sufficient assurance that the purpose for which the conveyance is made, and the credit granted, will be preserved indefinitely.

Because the Taxpayers are conveying the fee simple to an agency of the Commonwealth, we may look to the statutory language regarding that agency in order to determine whether the purpose can be assured in perpetuity. As part of its duties under *Va. Code* § 10.1-200, DCR must

...establish and implement a long-range plan for acquisition, maintenance, improvement, **protection and conservation** for public use of those areas of the Commonwealth best adapted to the development of a comprehensive system of outdoor recreational facilities in all fields, including, but not limited to: parks (Emphasis

added.)

In addition, the Director of DCR does not have unlimited authorization to convey, lease or demise any rights, privileges or interests regarding land that DCR holds, supervises or controls. Instead, such authorization is "subject to the consent and approval of the Governor and the General Assembly, following review as to form and content by the Attorney General" *Va. Code* § 10.1-109.

When all of the factors are considered, it appears that the purpose requirement will be satisfied in this case. First, the Taxpayers have stated that they are conveying, and DCR has stated that it is taking, the land for an appropriate conservation purpose, which is the creation of a state park. In addition, DCR has been charged with fulfilling that purpose in its enabling legislation. Because that agency is responsible for protecting and conserving the Commonwealth's parks, and it is unable to convey the land without the approval of the Governor and the General Assembly, it is reasonable to presume that the purpose of this donation will be assured in perpetuity.

Because the donation meets all of the requirements established by the Act, to the extent that any portion of the conveyance qualifies as a charitable contribution under the bargain sale doctrine, that portion of the conveyance would qualify for the Land Preservation Tax Credit.

I trust that this reply answers your ruling request. 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. 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

