

Rulings of the Tax Commissioner

Document Number: 07-131
Tax Type: Land Preservation Tax Credit
Brief Description: Only those taxpayers who actually earn or otherwise acquire the Credit may use it.
Topics: Credits
Date Issued: 08/17/2007

August 17, 2007

Re: § 58.1-1821 Application:
Use of Land Preservation Tax Credits on a Consolidated Return

Dear *****:

This is in response to your letter of April 5, 2007, in which you requested that the Department of Taxation ("TAX") reinstate the Land Preservation Tax Credits (the "Credits") on the 2005 consolidated corporate income tax return filed by ***** (the "Taxpayer").

FACTS

Nine affiliates of the Taxpayer each acquired Credits in the amount of \$100,000. In 2005, these nine corporations filed a consolidated Virginia corporate income tax return. The total amount of the Credit that was claimed on this return was \$900,000. This amount was later limited by TAX to \$100,000. You object to this limitation and ask that TAX reinstate the Credit in the amount of \$900,000.

RULING

Taxpayers who possess the Credit are limited to claiming \$100,000 in each taxable year. Thus, the amount of the Credit is typically limited to \$100,000 per income tax return. In Public Document ("P.D.") 05-136 (8/10/05), however, TAX examined

whether married taxpayers who each possessed a Credit could claim more than the allowable \$100,000 on a joint return. In that case, we concluded that the taxpayers could claim up to \$200,000 on the joint return. This conclusion was based on the fact that both spouses had purchased separate Credits. As a result, each taxpayer was allowed to claim the maximum of \$100,000 on the return, which resulted in an allowable Credit of up to \$200,000.

The provision applicable to the 2005 returns appeared in *Va. Code* § 58.1-512 B 1 as follows: "The amount of credit that may be claimed by **a taxpayer** shall not exceed . . . \$100,000." This language was amended and moved to *Va. Code* § 58.1-512 C 1 in 2006. Among the amendments, the emphasized words "a taxpayer" were changed to "each taxpayer." Because the statute imposes the limitation on a per-taxpayer basis, not a per-return basis, it is clear that when more than one taxpayer is included in a return then the separate limitations must be applied to each taxpayer for which a credit is claimed. Under *Va. Code* § 58.1-442, a consolidated return is a single return for a group of corporations. Since each corporation in the consolidated return is a taxpayer, the \$100,000 limitation will be applied to each corporation that has earned or otherwise acquired Credits claimed in the return. As a result, the Taxpayer will be allowed to claim the Credits in the amount of \$900,000 on the consolidated return. The Taxpayer's account will be adjusted to reflect this ruling.

Please note that there would be a different outcome if each of the nine affiliates had not obtained their own Credits. Only those taxpayers who actually earn or otherwise acquire the Credit may use it. Thus, if only one of the nine affiliates had obtained the entire \$900,000 Credit amount, the total amount of Credit that could be claimed on the consolidated return would be limited to \$100,000.

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 TAX'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 Tax Policy, Policy Development, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner

