

Rulings of the Tax Commissioner

Document Number: 07-132
Tax Type: Land Preservation Tax Credit
Brief Description: Donation of land to the National Park Service as part of a bargain sale
Topics: Credits
Date Issued: 08/24/2007

August 24, 2007

Re: Ruling Request: Federal Agency as Qualifying Donee for Purposes of the
Land Preservation Tax Credit

Dear *****:

This is in response to your e-mail of August 2, 2007, in which you requested a ruling regarding the Land Preservation Tax Credit (the "Credit") on behalf of your client (the "Taxpayer").

FACTS

The Taxpayer is contemplating a donation of a fee simple interest in land, within the view-shed of the Blue Ridge Parkway, to the National Park Service as part of a bargain sale. The National Park Service is unable to allow perpetual development restrictions to be included in the deed of gift. The National Park Service has provided a statement of the conservation intentions of the donated property, however. This document states, "These lands, when acquired, will be managed as part of the Blue Ridge Parkway and in compliance with laws and regulations affecting the National Park Service."

The Taxpayer claims 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 Taxpayer intends to make a charitable donation with respect to the excess value.

You have two questions regarding this transaction. First, you ask whether the National Park Service is a qualified donee for purposes of the Credit. In addition, you wish to know whether, in light of the fact that there cannot be a perpetual development restriction, the charitable contribution portion of the bargain sale will qualify for the Credit.

RULING

The Virginia Land Conservation Incentives Act of 1999 (the "Act"), as amended and codified at *Va. Code* § 58.1-510, *et al.*, provides an income tax credit for forty 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"

Under *Va. Code* § 58.1-512 C 2, 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. In this case, the Taxpayer plans to convey a fee simple interest in the property to the National Park Service. 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 be a qualifying donation for the purposes of the Credit.

While this conveyance is a qualifying donation, it still must be made to a qualifying donee. Under *Va. Code* § 58.1-512 A, Credits are allowed if a donation is made to "a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes." It seems that a donation to certain federal agencies, such as the National Park Service, would qualify under this statement.

Virginia Code § 58.1-512 C 4, however, states, "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 United States 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)." The United States government is not contained in any of these categories.

Thus, it appears that these two sections of the law are not compatible with each other. When this happens, the courts attempt to construe "all statutes *in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious and just in their operation." Tyson v. Scott, 116 Va. 243, 253 (1914). LZM, Inc. v. Virginia Department of Taxation, 269 Va. 105, 606 S.E.2d 797 (2005). If this interpretation is used in this case, it is clear that the first section of the law is the general operative statement, while the second part provides a list of qualifying entities, but does not describe all of the possible donees. As a result, because the National Park Service does meet the qualifications of *Va. Code* § 58.1-512 A, it would be a qualifying donee for the purposes of the Credit.

This conveyance meets many of the initial requirements to qualify for the Credit, but it must also satisfy the purpose requirement. Because the National Park Service does not allow perpetual development restrictions to be included in the deed of gift, the purpose is not reflected in the deed. The statement provided by the National Park Service, however, declares that, "These lands, when acquired, will be managed as part of the Blue Ridge Parkway and in compliance with laws and regulations affecting the National Park Service." This would be an appropriate purpose under *Va. Code* § 58.1-512 A.

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. In this case, the deed is unable to guarantee that the purpose of the donation 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. As 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.

Here, the Taxpayer is conveying the fee simple to the National Park Service. Because of this, we can look to the statutory language regarding that agency in order to determine whether the purpose will be assured in perpetuity. Under 16 USCS § 1, the purpose of the park system is to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

In addition, 16 USCS § 1a-1 states, "The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." As a result, the National Park Service must have the permission of Congress in order to change the use of the land.

After looking at the statutory language describing both the responsibilities and purpose of the National Park Service and its inability to change the use of the land without the permission of Congress, it is reasonable to presume that the purpose of this donation will be assured in perpetuity. Therefore, the donation meets all of the requirements established by the Act. Because of this, to the extent that any portion of the conveyance qualifies as a charitable contribution under the bargain sale doctrine, that portion of the conveyance will 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,

Janie E. Bowen
Tax Commissioner

