

# Rulings of the Tax Commissioner

**Document Number:** 07-201  
**Tax Type:** Land Preservation Tax Credit  
**Brief Description:** 2006 legislative change TAX must actually issue the Credit to the taxpayer  
**Topics:** Land Preservation Tax Credit  
**Date Issued:** 11/30/2007

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November 30, 2007

Re: Ruling Request: Date of Use of Transferred Land Preservation Tax Credits

Dear \*\*\*\*\*:

This is in response to your e-mail of October 12, 2007, in which you requested a ruling regarding the Land Preservation Tax Credit (the "Credit").

## FACTS

The instructions for the new LPC-2 form, which is used to notify the Department of Taxation ("TAX") of a transfer of the Credit, state, "The transfer or allocation must be completed before the end of a taxable year in order for the recipient to use the credit for that taxable year." In addition, the instructions for this form and the new LPC-1 form, which is used to apply for the Credit, notify taxpayers that, for donations made on or after January 1, 2007, transfers cannot be made until TAX has issued the Credit for the donation.

You have written to request that TAX reconsider its position that credits cannot be transferred until a credit acknowledgement has been issued. You state that this policy is due to the new \$100 million cap for 2007. You believe, however, that the cap may not be reached this year and, thus, that the transfer restriction is not necessary. In addition, you feel that this restriction is unfair because it may be difficult for taxpayers to complete the required actions by the end of the year. You ask that, as a compromise, TAX allow taxpayers to transfer credits contingent upon approval from TAX, even if such approval happens after the end of the year.

## RULING

During the 2006 legislative session, several changes were made to the Credit. One of the major changes was to require taxpayers to apply for the Credit. Thus, TAX is no longer simply acknowledging the Credit as has been done in the past. Instead, TAX must actually issue the Credit. As a result, a taxpayer who has made a donation that qualifies for the Credit does not possess any Credit until he or she receives the notice indicating that TAX has issued the Credit to the taxpayer.

Modifications were also made to the transferal process of the Credit, in particular to the timing of the transfer. The law now states, "Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 11 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer." *Va. Code § 58.1-512 D b 5.*

Thus, a taxpayer to whom a Credit has been transferred may not use the Credit for a taxable year prior to the taxable year in which the transfer has occurred. A transfer may not occur, however, until the transferring party actually possesses the Credit. As taxpayers now must apply for the Credit, it is clear that a transferor cannot possess such Credit until it has been issued by TAX. Therefore, TAX cannot allow a transferred Credit to be claimed for a taxable year prior to the one in which it was issued or transferred. This is true even when the issuance of the Credit occurs in a taxable year after the one in which the qualifying donation occurred. Please note that this restriction is not due to the \$100 million cap, but is instead required by the changes in the law relating to the issuance and transfer of the Credit.

Even if I were not bound by the law, however, I find your argument that this restriction is unfair because it may be difficult for taxpayers to complete the required actions by the end of the year to be unpersuasive. The new \$100 million cap was well publicized, as were the time restrictions that various conservation agencies, the Department of Conservation and Recreation, and TAX would be facing towards the end of the year. Thus, taxpayers were aware that waiting until later in the year to apply for and transfer credits could result in credits not being issued until 2008 and, thus, that transfers could not be made until that year.

Please note that, despite the timing restriction, transferees are given an advantage

in that they are allowed an eleven-year carryover period from the year of issuance for the Credit. This is substantially longer than the previous carryover period, which was five years from the year of the origination of the Credit. It is also longer than the carryover period allowed to those who actually make the qualifying donation, which is ten years from the year of origination.

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 website located at [www.tax.virginia.gov](http://www.tax.virginia.gov). If you should have any questions regarding this ruling, you may contact \*\*\*\*\* in the Office of Tax Policy, Policy Development Division, at \*\*\*\*\*.

Sincerely,

Janie E. Bowen

Tax Commissioner

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