

Rulings of the Tax Commissioner

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Tax Type: Land Preservation Tax Credit
Brief Description: When is an application for a credit of over \$1 million would be considered complete?
Topics: Clarification; Land Preservation Tax Credit
Date Issued: 05/25/2007

May 25, 2007

Dear *****:

You requested clarification regarding policy of the Department of Taxation ("TAX") with respect to the queue for allocation of Land Preservation Tax Credits. In particular, you inquired when an application for a credit of over \$1 million would be considered "complete" as required by *Va. Code* § 58.1-512 D 4a, which provides that: "The credits shall be issued in the order that each complete application is received."

TAX has determined that an application for a credit of more than \$1 million will not be considered to be complete for purposes of issuing credits until verification of conservation value is received from the ***** ("DCR") as required by *Va. Code* § 58.1-512 D 3a. As a result, an application for a credit of over \$1 million will not enter the queue until the taxpayer has obtained DCR verification of the donation.

It has been suggested that TAX place applications in the queue pending receipt of DCR verification. The significance of an application's place in the queue is the amount of the annual cap (\$100 million for donations made in 2007) that may be allocated to the applicant, particularly as allocations approach the annual cap. If one application's eligibility is tentative while DCR action is pending, then every subsequent application is also subject to reallocation of credits should the application not be verified by DCR. While I understand that you may disagree with this determination, I must point out that, under *Va. Code* § 58.1-512 D, TAX is

clearly given the sole authority to establish procedures and deadlines for the issuance of Land Preservation Tax Credits. I believe that the determination that we have made is in the best interests of all donors.

To clarify the impact of this determination, TAX intends to issue 2007 credits (i.e., that may be claimed on a 2007 return) for donations made during calendar year 2007 regardless of when the application is received and completed, even if well into 2008, until the \$100 million allocation is used up. Therefore, the worst that can happen to any taxpayer because of a delay in completing an application is that the 2007 credit cap will be reached and the taxpayer will have to wait until taxable year 2008 to claim his first credit. We recognize that this determination will mean that 2007 credits are likely to go to those who donate and apply early in 2007; and we believe that this is a desirable tax policy.

If you have any further questions, or if there is anything else I can do, please let me know.

Sincerely,

Janie E. Bowen
Tax Commissioner
