

Rulings of the Tax Commissioner

Document Number: 08-159
Tax Type: Land Preservation Tax Credit
Brief Description: Each members of the affiliated group holding Credits could claim up to \$100,000
Topics: Constitutional Provisions; Corporate Distributions and Adjustments; Credits; Land Preservation Tax Credit
Date Issued: 08/29/2008

August 29, 2008

Re: Ruling Request: Corporate Income Tax

Dear *****:

This is in response to your letter in which you request a ruling on behalf of your client, ***** (the "Taxpayer"), concerning the use of the Land Preservation Tax Credit (the "Credit") on a Virginia consolidated corporate income tax return.

FACTS

The Taxpayer files a Virginia consolidated income tax return with 12 affiliated corporations. Each of the 13 members of the affiliated group plans to acquire \$100,000 worth of the Credit to be claimed against the group's consolidated tax liability. The Taxpayer anticipates that the consolidated income tax liability for the group will exceed \$1.3 million. The Taxpayer requests a ruling as to whether the Credit limitation in *Va. Code* § 58.1-512 is the aggregated total of each member of the group holding a credit or each affiliates tax computed on a separate return basis.

RULING

The Virginia Land Conservation Incentives Act, codified at *Va. Code* § 58.1-510, *et seq.*, provides an income tax credit for taxpayers who donate land or an interest in land to public or private conservation agencies for conservation or preservation purposes. Under *Va. Code* § 58.1-512 C 1, the amount of the Credit that may be claimed by each taxpayer for a given taxable year cannot exceed \$100,000.

In Public Document (P.D.) 07-131 (8/17/2007), the Department ruled that each corporation in a consolidated return is a taxpayer for purposes of the Credit. Therefore, because each corporation in the consolidated return is a taxpayer, the \$100,000 limitation is applied to each corporation that has earned or otherwise acquired Credits claimed in the return.

Under *Va. Code* § 58.1-444, each corporation included in an affiliated group that files a consolidated return is jointly and severally liable for the entire tax reported on a consolidated return or assessment by the Department against the affiliated group. Tax payments and credits contributed by any member of the affiliated group can be applied to the joint liability.

In P.D. 91-101 (6/24/91), the Department addressed this issue with regard to the Neighborhood Assistance Act. In this ruling, the Department concluded that participation in a consolidated return does not limit the number or amount of tax credits that an affiliated group may claim on its consolidated return. Thus, credits earned by each affiliate are applied to the joint tax liability, subject to each corporation's separate limitation imposed by the credit. This policy has been similarly applied to an affiliated group of corporations claiming the Coalfield Employment Enhancement Tax Credit. See P.D. 97-409 (10/08/97).

Thus, with regard to income tax credits, the Department's policy has been to permit an affiliated corporation that earns a tax credit to claim such credit against the joint liability reported on a consolidated return regardless of the amount of that affiliate's separate tax attributable to the consolidated liability.

In applying this policy to the Credit, each individual member of an affiliated group of corporations included in a consolidated corporate income tax return may claim up to \$100,000 regardless of its contribution to the total tax liability. In the case of the Taxpayer, each of the 13 members of the affiliated group holding Credits could claim up to \$100,000 worth of the Credit against the group's consolidated tax liability. If all 13 affiliates are holding Credits, up to \$1.3 million could be claimed on the consolidated income tax return.

The *Code of Virginia* section and public documents cited, along with other reference documents, are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's web site located. If you should have any questions regarding this ruling, you may contact ***** in the Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner