

# Rulings of the Tax Commissioner

**Document Number:** 08-66  
**Tax Type:** Land Preservation Tax Credit  
**Brief Description:** Credit is allowable to the Beneficiary if he satisfies all of the requirements set forth in Va. Code § 58.1-512  
**Topics:** Land Preservation Tax Credit  
**Date Issued:** 05/19/2008

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May 19, 2008

Re: Land Preservation Tax Credit

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

You have both requested a ruling concerning the same post-mortem donation of an easement that qualifies for a Virginia land preservation income tax credit. You have also furnished Power of Attorney forms indicating which party you represent. According to the Power of Attorney forms, \*\*\*\*\* is representing the \*\*\*\*\* , one of the executors (hereafter referred to as the "Estate"). \*\*\*\*\* is representing \*\*\*\*\* in his individual capacity, (hereafter referred to as the "Beneficiary"), although he is also one of the executors of the \*\*\*\*\* . You ask whether the Virginia land preservation tax credit can be claimed by the Estate or the Beneficiary. I conclude that the Beneficiary is entitled to claim the credit.

## FACTS

Pursuant to *Va. Code* § 64.1-57.3 the executors of the Estate donated a conservation easement in a certain parcel of land that had been owned by the decedent and had been specifically devised to the Beneficiary by the decedent's will. That statute provides, in pertinent part:

§ 64.1-57.3. Power granted to personal representatives and trustees to donate conservation easements.

Personal representatives and trustees, whether heretofore or hereafter qualified or appointed, are hereby granted the power to donate a conservation easement as provided in the Virginia Conservation Easement Act (§ 10.1-1003 *et seq.*) or the Open-Space Land Act (§ 10.1-1 700 *et seq.*) on any real property of their decedents and settlors, in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the United States Internal Revenue Code of 1986, as amended, provided they have the written consent of all of the heirs, beneficiaries and devisees whose interests are affected thereby.

As required by *Va. Code* § 64.1-57.3, the Beneficiary, as the sole devisee of the land upon which the easement was granted, gave his written consent to the donation by signing the deed conveying the Easement individually as an additional grantor, in addition to signing in his capacity as one of the executors. The deed was recorded in August 2006.

## RULING

The relevant portion of *Va. Code* § 58.1-512 grants the credit to the landowner who donates the easement:

. . . there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50% of the fair market value of any land or interest in land located in Virginia which is 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 by the landowner/ taxpayer** to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. (Emphasis added.)

Therefore, the issue is whether the land was owned by the Estate or the Beneficiary on the date that the deed conveying the easement was executed. In Virginia, title to real estate devised by will passes directly to the devisee, although the personal representative of the estate may have the power to sell the real estate and thereby divest the devisee of title. The personal representative has no interest in land devised to others unless he exercises his power to sell. I construe the power granted by *Va. Code* § 64.1-57.3 to be analogous to a power to sell real estate. In other words, title to the land in question vested in the Beneficiary upon the decedent's death, and any subsequent taxable events related to that land are reportable by the Beneficiary.

The Internal Revenue Service reached a similar conclusion in connection with an administrator's sale of Virginia real estate that had been devised to beneficiaries under the will's remainder clause. In Private Letter Ruling 8003013 the issue was whether capital gain recognized upon the administrator's sale was reportable on the income tax return of the estate or the beneficiaries. After reviewing Virginia law, the IRS concluded:

In the instant case, it would appear, that under local law, as expressed in the *Coles and Mosby* decisions, the devise in question only conferred on the administrator a naked power to sell the property and not an interest in the property. If the administrator has only a naked power to sell, title vests in the heir, subject to be divested by the execution of the power of the administrator, *Coles v. Jamerson* [112 Va. 311, 71 S.E. 618 (1911)].

Title to the real property in question passed to the beneficiaries upon the death of A. The sale of the property by the administrator was a sale on behalf of the beneficiaries, and not on behalf of A's estate.

Accordingly, any rains recognized on such sale are includible in the gross incomes of the beneficiaries, and not includible in the grass income of the estate.

PLR 8003013; 1979 PLR LEXIS 221 (italics and citation supplied).

Although the executors of the Estate signed the deed conveying the conservation easement, and it appears that the Estate received a federal tax benefit under IRC § 2031 from the conveyance, title to the land was vested solely in the Beneficiary at the time of conveyance and any tax consequences from the conveyance belong to the Beneficiary, not the Estate, in the absence of a law such as IRC § 2031 specifying a different result.

Therefore, the Virginia land preservation tax credit is allowable to the Beneficiary if he satisfies all of the requirements set forth in *Va. Code* § 58.1-512, and the Beneficiary is the holder of any allowable but unused credits for purposes of transferring such credits under *Va. Code* § 58.1-513.

This ruling addresses only issues related to who is deemed to be the "landowner/ taxpayer" under *Va. Code* § 58.1-512 in light of the undisputed representation in the recorded deed of easement that the Beneficiary was the sole devisee of the land at the time the deed conveyed the conservation easement in question. I express no opinion as to the ownership of any intangible property rights that may be subject to administration under the will.

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](http://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