

# Rulings of the Tax Commissioner

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**Tax Type:** Land Preservation Tax Credit  
**Brief Description:** Land Preservation Tax Credit  
**Topics:** Land Preservation Tax Credit  
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February 4, 2009

Re: Ruling Request: Land Preservation Tax Credit

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

This is in response to your letter of July 29, 2008, in which you requested a ruling regarding the Land Preservation Tax Credit (the "Credit") on behalf of your client (the "Taxpayer").

## FACTS

You represent the owners of a farm who wish to place an open space easement on their land. The farm is owned by two trusts. The first trust owns 30 percent of the farm and is a revocable trust for Federal income tax purposes. All of the transactions occurring in this trust are reported by the grantor on her personal income tax return. The second trust owns 70 percent of the farm and is an irrevocable non-grantor trust. The non-grantor trust is a taxpaying entity that files its own tax return each year. The same person is Trustee for both estates. The non-grantor trust is not entitled to a charitable deduction under IRC § 170.

You have several questions regarding the use of the Credit by a trust. First, you ask whether a non-grantor trust is a "landowner/taxpayer" for the purposes of *Va. Code* § 58.1-512. Second, you ask whether the contribution must meet the requirements of Internal Revenue Code ("IRC") § 170. Lastly, you ask whether the Credit may be claimed against a fiduciary income tax liability.

## DETERMINATION

*Va. Code* § 58.1-512 A states that in order to qualify for Land Preservation Tax Credits, a donation of land must be made by a "landowner/taxpayer." *Va. Code* § 58.11 of the Code defines the term "taxpayer" as "every person, corporation, partnership, organization, trust or estate subject to taxation under the laws of the Commonwealth, or under the ordinances, resolutions or orders of any county, city,

town or other political subdivision of this Commonwealth." In addition, the Attorney General has addressed the specific situation of eligibility under the Land Preservation Tax Credit. A November 2002 Opinion of the Attorney General states, "[a]ny person, corporation, partnership, organization, trust or estate falling into these categories could hold and transfer a tax credit." Opinion of the Attorney General 02-094 (11/19/02). Thus, the non-grantor trust would be considered a taxpayer for the purposes of the Credit.

You state that the non-grantor trust in this instance is not eligible for the federal deduction for charitable contributions of land. You ask whether the trust must meet the requirements of IRC § 170 even though it cannot claim the federal deduction. Public Document ("PD") 05-122 (July 22, 2005) concluded that "an easement must qualify as a charitable deduction under IRC § 170(h)" to be eligible for the Credit. Therefore, if the easement does not meet the requirements of IRC § 170(h), it also does not meet the conditions established for the Credit, and, therefore, the easement cannot qualify for the Credit. The same is true for all of the other federal requirements that are referenced by the Virginia Land Conservation Incentives Act (*Va. Code* § 58.1-510, *et al.*). However, this does not mean a taxpayer must file or be eligible for the federal deduction to receive the Credit.

Finally, *Va. Code* § 58.1-512 A provides in part that "there shall be allowed as a credit against the tax liability imposed by *Va. Code* §§ 58.1-320 and 58.1-400." This language states that the Credit can be claimed against individual income taxes (*Va. Code* § 58.1-320) and corporate incomes taxes (*Va. Code* § 58.1-400); however, other sections of the statute suggest that the Credit may also be claimed against a fiduciary income tax liability. *Va. Code* § 58.1-512 C provides in part that "in any one taxable year the credit used may not exceed the amount of individual, fiduciary or corporate income tax otherwise due." Additionally, *Va. Code* § 58.1-513 B provides in part that:

any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as set forth in the agreement of said entity.

When there is ambiguity as to the meaning of a statute, it is appropriate to apply the rules of statutory construction to determine the legislative intent. "Language is considered ambiguous when it may be understood in more than one way, or simultaneously refers to two or more things." *Lee-Warren v. School Board*, 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991). Further, statutes dealing with the same subject are to be construed together to produce harmonious results that will give effect to all provisions. *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957).

*Va. Code* § 58.1-512 A states that the Credit can be claimed against individual and corporate incomes taxes. However, *Va. Code* § 58.1-512 C states that the Credit

may not exceed the individual, fiduciary or corporate income tax liability and Va. Code § 58.1-513 B details the use of the Credit by fiduciaries. As the language may be understood to either (1) allow the Credit to be claimed only against individual and corporate income taxes or (2) allow the Credit to be claimed against fiduciary income tax in addition to individual and corporate income taxes, TAX believes there is ambiguity as to the meaning of the statute and must apply the rules of statutory construction to determine the legislative intent. Because the legislature specifically addressed fiduciaries as entities that are eligible for the Credit and the statute states that the Credit may not exceed the fiduciary income tax liability, it must be assumed that they intended for the Credit to be claimed against the fiduciary income tax. TAX concludes that the Credit may be claimed against individual, corporate and fiduciary income taxes.

Therefore, a non-grantor trust is eligible for the Credit if the applicable donation meets all of the relevant requirements. In addition, the Credit may be claimed against a fiduciary income tax liability.

The cited *Virginia Code* sections and other reference documents are available online in the Tax Policy Library section of the Department's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov). I hope the foregoing has responded to your inquiry and should you have additional questions, please contact \*\*\*\*\* in the Office of Tax Policy and Administration, Policy Development Division, at \*\*\*\*\*.

Sincerely,

Janie E. Bowen  
Tax Commissioner