

Rulings of the Tax Commissioner

Document Number: 11-33
Tax Type: Individual Income Tax
Brief Description: Taxpayers cannot claim any Credits that were retained by the sellers
Topics: Credits
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March 3, 2011

Dear *****:

This will reply to your letter in which you seek a refund of individual income tax paid by ***** (the "Taxpayers") for the 2005 and 2006 taxable years resulting from the devaluation of land preservation tax credits (the "Credits").

FACTS

The Taxpayers, a husband and wife, purchased Credits that could be claimed in 2005 and 2006. At the time of the purchase of the Credits, the notification form filed with the Department indicated that the sellers retained Credits.

The Taxpayers jointly claimed the Credits on their 2005 and 2006 returns. In 2008, the Department devalued the Credits on a pro-rata basis to all holders of the Credits. The devaluation of the Credits resulted in assessments of tax being issued to the Taxpayers for the 2005 and 2006 taxable years.

The Taxpayers paid the assessments and have filed an appeal, contending they are entitled to claim Credits that were retained by the sellers at the time of transfer.

DETERMINATION

Virginia Code § 58.1-513 C provides that a taxpayer carrying Credits may transfer unused but otherwise allowable Credits to another taxpayer. Notification of such a transfer must be made to the Department through a prescribed procedure and form. Thus, a taxpayer to whom Credits have been transferred may claim those Credits on his or her Virginia income tax return beginning in the taxable year that the transfer of the Credit occurs. Only those taxpayers who actually earn or purchase Credits may claim such credits. See Public Document (P.D.) 05-136 (8/10/2005) and P.D. 10-66 (5/1/2010).

As such, the Taxpayers may only claim the devalued amount of the Credits that they purchased in 2005 and 2006. They cannot claim any Credits that were retained by the sellers. The Credit transfer is a transaction between the transferor and transferee. The Commonwealth is not a party to the transaction and cannot grant Credits that were not transferred.

Accordingly, the Department's assessments are correct, and the Taxpayers' protective claim for refund of income taxes for the 2005 and 2006 taxable years is denied.

The *Code of Virginia* sections 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 website. If you have questions concerning this determination, you may contact ***** in the Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Craig M. Burns
Tax Commissioner

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