

Rulings of the Tax Commissioner

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Tax Type: Corporation Income Tax
Brief Description: Land preservation tax credit; Eligible donee
Topics: Credits
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Superseded by PD 03-55

November 12, 1999

Dear*****

This will reply to your letter requesting a ruling regarding the Virginia Land Conservation Incentives Act of 1999 (the "Act") on behalf of the ***** (the "Organization.")

FACTS

The Organization promotes the development of nature trails in a Virginia community. The trails are open to the public where they are commonly used by pedestrians, bicyclists, and equestrians. Most of the trails are along roadways and in natural areas, such as river banks or undeveloped woods. There are several areas where the trails are incomplete because they cannot cross private property. The Organization is asking the various owners of the private property to grant easements so that the trails may be completed. The Organization is requesting a ruling as to whether private property owners would be able to receive a credit under the Act.

RULING

The Act, codified at Code of Virginia § 58.1-510, et al. (copy enclosed), provides a credit for 50% of the value of an interest in real property donated to an eligible charitable organization or instrumentality of the Commonwealth for land conservation purposes. The Act will be effective for taxable years beginning on or after January 1, 2000 provided the tax relief granted by the Personal Property Tax Relief Act of 1998 reaches the next phase. At the time of this letter, it is uncertain

whether the Act will become effective for taxable years beginning on or after January 1, 2000. 📄

Assuming that the credit is effective, the determination of whether the private property owners would be eligible to receive the credit depends largely on two factors. Those factors are whether the use of the easement qualifies under the Act and whether the organization to which the easement is donated to qualifies under the Act.

For an easement donated for use as a nature trail to qualify for the credit, it must qualify as a charitable deduction under Internal Revenue Code ("I.R.C.") § 170(h). This section of the I.R.C. requires that each contribution of a qualified real property interest be made exclusively for conservation purposes, which includes land used for outdoor recreational purposes by the general public, to a qualified organization. Treasury Regulation § 1.170A-14(d)(2)(i) lists nature trails used by the public as an acceptable example of an outdoor recreational purpose. As such, it appears that easements donated in perpetuity for use as a nature trail by the public will qualify for the credit.

The Act requires that the donee organization must be the Commonwealth of Virginia, an instrumentality of the Commonwealth, or a qualified charitable organization. To be a qualified charitable organization, the organization must be a tax-exempt organization under the provisions of I.R.C. § 501(c)(3). Further, the organization must also be classified as a private foundation under I.R.C. § 509(a)(2) or § 509(a)(3) and is controlled by a § 509(a)(2) organization.

Based on documentation provided by the Organization, the Organization is not an eligible donee. While the Organization is tax-exempt under I.R.C. § 501(c)(3), it is not classified as, or controlled by a private foundation under I.R.C. § 509(a)(2) as is required by the statute. In order for donors to receive the credit, they would have to donate an easement to a qualified charitable organization (as defined above), the Commonwealth of Virginia, or an instrumentality of the Commonwealth, including, but not limited to, a county, city or town.

This ruling has been made subject to the facts presented to the department as summarized above. Any change in these facts or the introduction of facts by another party may lead to a different result. If you have any additional questions regarding this ruling, please feel free to call ***** in the Office of Tax Policy at *****.

Sincerely

Danny Payne
Tax Commissioner

Related Policy Documents: PD 03-55