

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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November 14, 2007

Re: Ruling Request: Amount of Land Preservation Tax Credit Requested by the Taxpayer

Dear *****:

This is in response to your e-mail, in which you requested a ruling regarding the Land Preservation Tax Credit (the "Credit").

FACTS

Recently, you informed the Department of Taxation ("TAX") that you have been in contact with several landowners who are contemplating donations of easements that would potentially qualify for Credits in amounts of \$1 million or higher. These landowners claim that the donations would qualify as charitable deductions under § 170(h) of the Internal Revenue Code as required by *Va. Code* § 58.1-512 C 2. They believe that they would have difficulty, however, meeting certain conditions imposed by the Department of Conservation and Recreation ("DCR") so that DCR would verify the conservation value of the donation. These conditions include fencing livestock away from all waterways and obtaining pre-approval for a stream crossing.

Because of these concerns, you have written to request that these landowners be allowed to claim a Credit for an amount less than \$1 million so that they will not be required to meet the conditions imposed by DCR.

RULING

The Virginia Land Conservation Incentives Act (the "Act"), codified at *Va. Code* § 58.1-510, *et al.*, provides an income tax credit for taxpayers who donate land or an interest in land to public or private conservation agencies for conservation and/or preservation purposes. After changes made during the 2006 legislative session, the credit is now equal to forty percent of the fair market value of the qualified donation, which must be substantiated by a qualified appraisal prepared by a qualified appraiser. In addition, taxpayers making qualifying donations on or after January 1, 2007 must now

apply for the Credit.

When a taxpayer applies for a Credit that is less than \$1 million, he or she must apply to TAX by completing Form LPC-1. This form is used to provide TAX with information regarding the donor, the property involved in the donation, and the conservation features of the donation. If the taxpayer applies for a Credit that is \$1 million or greater, however, there is a dual application process. The taxpayer must file his or her application with TAX and with DCR; and DCR must verify the conservation value before TAX may issue the Credit. In addition to the Form LPC-1, taxpayers requesting Credits for these amounts must complete Schedule B if the qualifying donation is a less-than-fee interest in land or Schedule C if it is a fee-simple interest in land.

These additional forms are used to provide DCR with the information necessary to verify the conservation value. This information is required because the law now requires that, in order for a Credit in the amount of \$1 million or more to be issued by TAX, the "conservation value of the donation [must be] verified by the Director of the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose." *Va. Code* § 58.1-512 D 3 a. Thus, DCR requires additional information so that it can verify the conservation value of the donation. This is particularly true for donations of a less-than-fee interest, such as an easement.

Under *Va. Code*

§ 58.1-512 A, a Credit is allowed for certain donations and, effective for donations made on and after January 1, 2007, the Credit "shall be 40% of the fair market value of the land or interest in land so conveyed." The Credit is not self-executing, however. As discussed above, the taxpayer must apply for the Credit; but this does not mean that the taxpayer must apply for the entire allowable amount.

The law states, "The taxpayer shall apply for a credit after completing the donation . . . If the application requests a credit of \$1 million or more, then a copy of the application shall also be filed with the Department of Conservation and Recreation by the taxpayer." *Va. Code* § 58.1-512 D 1. Therefore, the taxpayer must request a Credit amount \$1 million or greater in order to be required to file the application with DCR and meet the requirements imposed by that agency. If he or she chooses not to do so, then TAX will allow the taxpayer to simply file the Form LPC-1 with TAX and not seek approval from DCR. When completing Form LPC-1, these taxpayers should simply enter an amount less than \$1 million in Section III, Part N ("Credit Amount Requested"). Please note that these donations must still meet all of the other requirements established by the Act.

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 website located at www.tax.virginia.gov. If you should have any questions regarding this ruling, you may contact ***** in the Office of Tax Policy, Policy Development Division, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner
