



Transfer of Virginia Land Preservation Tax Credits Frequently Asked Questions

The Piedmont Environmental Council is providing this summary for informational purposes only. Please consult your attorney and/or accountant for professional advice.

The following applies to conservation easements donated on or after January 1, 2009.

How do I sell/buy credits?

Individuals or organizations can buy and sell tax credits directly with each other, or they may work through one of the brokers specifically established to match credit buyers and sellers. A taxpayer that transfers any amount of credit shall file a notification of such transfer and pay a fee to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

How much can I sell/buy them for?

The market for credits is fairly well developed. Of course you will need to sell tax credits at a discount in order to attract buyers. You will likely also have to pay federal tax on the proceeds from the sale of these credits. Starting in 2007, a 2% or \$10,000 transfer fee (whichever is less) will be levied as well. Please contact your own legal/accounting professional or a tax credit broker for more information.

Can I sell tax credits if I do not pay income tax in Virginia?

Yes, you can sell your credits if you are subject to any state or local taxation in Virginia. The Virginia Attorney General has issued an official advisory letter that states that "any person, corporation, partnership, organization, trust or estate subject to state or local taxation may hold and transfer the land conservation tax credit." (Buyers of tax credits must, of course, pay income tax in Virginia.)

Am I limited to selling/buying \$50,000 per year?

According to the Attorney General, sellers are limited only by the amount of credits they have to sell (50% of the value of the easement in 2006, 40% starting 2007, minus any credits they use themselves). Buyers are subject to the \$50,000 per year limitation on the use of credits but can buy many years worth of credits in a single transaction.

Can I buy a credit in 2009 to offset 2008 taxes?

The Department of Taxation has opined that conservation tax credit transfers must occur in the year in which the tax credit is to be applied. In other words, if you wanted to buy credits to offset 2008 taxes, you must have done so before December 31, 2008.

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Can I re-sell a credit that I purchased but could not use?

Yes, according to Department of Taxation, as a holder of the credit, any subsequent transferees are eligible to transfer any unused but otherwise allowable credit to another taxpayer. In order for the transfer of a credit to be valid, the taxpayer transferring the credit must file a notification of the transfer with the Department.

What happens when the \$100 million statewide cap has been met?

Credits will be issued on a first-come first-serve basis. The Department of Taxation will keep track of requested credits based on the date they receive a completed tax credit application. New applicants in a year where the \$100 million cap has been reached will simply be rolled over into the next year.

Is there any limit to the size of my easement donation and therefore the dollar value of credits I can request?

The value of all conservation easement donations must be determined by a "qualified appraiser." Donors requesting more than \$1,000,000 in credits will need to have the conservation value of their donation "verified" by the Department of Conservation and Recreation.

Who is a "qualified appraiser"?

PEC strongly advises landowners to work with an appraiser who has particular expertise in the area of conservation easement valuation. The intentional and unintentional overvaluation of conservation easement donations is an area receiving increased scrutiny by both the IRS and the Virginia Department of Taxation. In addition, new federal legislation defines a "qualified appraiser" as one who has earned an appraisal designation from a recognized professional appraiser organization. Consult your tax advisor about Notice 2006-96 which sets out transitional guidance relating to the new definitions of "qualified appraisal" and "qualified appraiser" under IRC §170f(11) and § 6695A of the Code regarding gross valuation misstatements, as added by § 1219 of the Pension Protection Act of 2006.