

Rulings of the Tax Commissioner

Document Number: 07-1
Tax Type: Individual Income Tax
Brief Description: Credit not eligible for transfer because the donation occurred before 01/01/02
Topics: Land Preservation Tax Credit
Date Issued: 01/09/2007

January 9, 2007

Re: § 58.1-1821 Application: Individual Income Tax

Dear *****:

This will reply to your letter in which you seek correction of the individual income tax assessment issued to a number of taxpayers (the "Taxpayers") for the taxable year ended December 31, 2003 as a result of a transfer of a Virginia Land Preservation Tax Credit (the "Credit") by ***** (the "Donors").

FACTS

The Donors made a donation of land eligible for the Credit during the 2000 taxable year. In December 2003, the Donors completed a Virginia Land Preservation Tax Credit Notification Form, transferring a portion of the Credit to the Taxpayers.

The Taxpayers claimed the Credit on their 2003 Virginia income tax returns. The Department denied the Taxpayers' claims on the basis that the Credit was not eligible for transfer because the donation occurred before January 1, 2002.

The Donors contend that the Taxpayers are eligible to claim the Credit as a result of legislation that allows a transferee to claim the Credit for

land donated prior to January 1, 2005, provided certain conditions are satisfied.

DETERMINATION

The Virginia Land Conservation Incentives Act of 1999 (the "Act") is found at *Virginia Code* § 58.1-510 *et seq.* The Credit authorized under this Act provides an income tax credit for taxpayers that donate land or an interest in land to public or private conservation agencies for conservation and preservation purposes. The Credit is equal to 50% of the "fair market value" of the qualified donation, which must be substantiated by a qualified appraisal that is prepared by a qualified appraiser.

Concerning the transfer of Credit under the Act, *Va. Code* § 58.1-513 C provides that a taxpayer carrying a Credit may transfer unused but otherwise allowable Credit to another taxpayer. Notification of such a transfer must be made to the Department through a prescribed procedure and form.

In 2002, the General Assembly amended *Va. Code* § 58.1-513 to add Subsection C, authorizing a taxpayer holding a Credit to transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. See Chapter 347 of the *2002 Acts of Assembly*. This Chapter contains two enactment clauses. In addition to the first enactment clause that amended *Va. Code* § 58.1-513 by adding subsections C through E, the Chapter includes a second enactment clause that states, ". . . the provisions of this act shall be effective for qualified donations made during taxable years beginning on or after January 1, 2002." In the Donors' case, the land donation occurred during the 2000 taxable year; therefore, the transfer provisions in subsection C are not available to the Donors or the Taxpayers under the Act. Also see Public Document (P.D.) 04-182 (10/7/2004).

In 2005, the General Assembly passed legislation to provide relief to transferees, in limited situations, who claimed the Credit for qualified donations of land made prior to January 1, 2002. House Bill 2788, Chapter 846 of the *2005 Acts of Assembly*, provides:

That the Department of Taxation is authorized to recognize the transfer of unused tax credits under the Virginia Land Conservation Incentives Act of 1999 for a donation made

prior to January 1, 2002, provided that (i) the transfer occurred on or before December 31, 2004, (ii) notification of at least one transfer attributable to such donation was filed with the Department on forms prescribed for that purpose on or before December 31, 2004, and (iii) the credit holder who transferred the credit can establish that the transfer was made in reliance on erroneous advice from the Department of Taxation concerning the transferability of the credits.

The Donors have established that the transfer occurred and notification of such transfer was filed on the prescribed forms before December 31, 2004. As such, the sole issue is whether the Donors relied on erroneous advice from the Department concerning the transferability of the Credit.

The Donors have asserted that they relied on the instructions for the 2002 Virginia Schedule CR and on P.D. 03-12 (2/27/2003) and P.D. 03-13 (3/4/2003). They submit that the instructions and the public documents, which address the transferability of the Credit, did not address the second enactment clause of the 2002 legislation. Consequently, the Donors argue that the instructions and two public documents can be construed to permit the transfer of the Credit, regardless of when the land was donated.

The public documents cited do not address the transfer of the Credit for land donated prior to January 1, 2002. These are correct and accurately interpret the law as applied to the factual situations addressed. Therefore, I cannot agree that the Department provided erroneous advice on which the Donors relied.

In regard to the Donors' contention that they relied on the instructions for the 2002 Virginia Schedule CR, I again must respectfully disagree that the Department provided erroneous advice. The instructions cannot be read in isolation, but must be viewed in the context of the section of the form being completed. In preparing the Virginia Land Preservation Tax Credit Notification Form, the Donors checked the box designated "Transfer of Land Preservation Credit" that includes the statement **"Property donation must have occurred on or after January 1, 2002."** This direction is clear and unambiguous. The Credit can only be transferred if the donation of land occurs on or after January 1, 2002.

Based on the statute and the clear direction provided on the Virginia

Land Preservation Tax Credit Notification Form, I find the Donors have failed to establish that the transfer of Credits in this case was made in reliance on erroneous advice from the Department of Taxation. Based on this finding, the conditions established by House Bill 2788, Chapter 846 of the *2005 Acts of Assembly*, have not been fully satisfied.

The *Code of Virginia* sections and public documents cited are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's website. If you have any questions regarding this determination, please contact ***** in the Office of Policy and Administration, Appeals and Rulings, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner