

# DEPARTMENT OF TAXATION

## 2002 Fiscal Impact Statement

1. **Patron** Howell

3. **Committee** House Finance

4. **Title** Land Preservation Tax Credit

2. **Bill Number** HB 1322

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would permit a taxpayer that earns Land Preservation Tax Credit to transfer such credit to another corporate or individual income taxpayer. The bill would also provide a subtraction for any gain or income realized by a corporate or individual taxpayer that receives a transfer of the credit to the extent such income is included on the taxpayer's federal income tax return.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not Available. (See Line 8.)

#### 6a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2001-02	\$47,620	GF
2002-03	\$1,776	GF
2003-04	\$1,776	GF

7. **Budget amendment necessary:** Yes.

Item(s): 283 and 285, Department of Taxation

### 8. **Fiscal implications:**

#### **Administrative Costs**

There are costs associated with modifying the system to implement this legislation. The Department of Taxation is currently in the process of replacing its automated systems as part of a partnership with AMS. As a result, the Department of Taxation will be maintaining two systems – the current STARS system and the new IRMS system – for a period of time as a contingency. The contract with AMS generally provides for the costs of implementing routine legislation. However, changes attributable to major legislation are not within the scope of the contract.

The Department of Taxation would incur costs of \$40,120 in Fiscal Year 2002 for changes to its existing system and \$1,776 in Fiscal Year 2003 and thereafter for systems maintenance. Changes to the new IRMS system would be covered under the AMS contract changes. The Department of Taxation would also incur other administrative costs with respect to this legislation of \$7,500 in FY 2002 for forms development.

### **Revenue Impact**

The impact of this bill on General Fund revenues is unknown. Allowing transfers of this credit could accelerate the revenue impact because a taxpayer who would have to carryover the credit to a future taxable year would be able to transfer the credit to another taxpayer who would claim the full amount of the credit in the year that it is earned or allowed. In addition, this bill may encourage some landowners whose income tax liabilities were previously insufficient to benefit from the credit to donate land and transfer the credit resulting in increased use of the credit.

The income tax subtraction created by this bill would have no impact on General Fund revenue because Virginia currently receives no revenue from the income generated from the transfer of these credits.

### **9. Specific agency or political subdivisions affected:**

Department of Taxation

### **10. Technical amendment necessary:** Yes.

It is the Department of Taxation's understanding that the patron will offer the following two amendments (See line 11):

Page 1, Line 26 After Any

Strike: tax credit allowed under this article may be transferred, in accordance with procedures and forms prescribed by the Tax Commissioner, by the taxpayer originally entitled to such credit to any other taxpayer.

Insert: taxpayer earning a credit under this article may transfer unused but otherwise allowable credits for use by other individual or corporate taxpayers on their Virginia income tax returns. A taxpayer that transfers any amount of credit under this article shall file a notification of such a transfer to the department, in accordance with procedures and forms prescribed by the Tax Commissioner.

Page 1, Line 29 At the beginning of the line

Strike: lines 29 through 38

Insert: D. To the extent included in or not otherwise subtracted from federal adjusted gross income pursuant to § 58.1-322 of the Code of Virginia or federal taxable income pursuant to § 58.1-402 of the Code of Virginia, there shall be subtracted any amount of gain or income recognized by a taxpayer that receives a transfer of a tax credit earned under this article.

This bill does not specify an effective date. The following technical amendment is suggested to ensure that the credit is effective for the 2002 taxable year.

Page 1, Line 38 At the end of the line

Insert: 2. That the provisions of this act shall be effective for taxable years beginning on and after January 1, 2002.

## **11. Other comments:**

### **Background**

Individuals and corporations can claim an income tax credit equal to 50% of the fair market value for donations of real property and interests in real property located in Virginia to governmental and nonprofit organizations whose purpose is to conserve natural resources, save land, and preserve historical sites. The types of property that would qualify for this credit include conservation easements, any partial interest, mineral right, remainder or future interest, or other interest or right in real property as defined under the Internal Revenue Code. Any conveyance of real property under this credit must be permanent and irrevocable.

The maximum credit a taxpayer can claim in any taxable year is limited to the lesser of the total income tax imposed or \$50,000 for the 2000 taxable year, \$75,000 for the 2001 taxable year, and \$100,000 for taxable years thereafter. The amount of credit earned in excess of tax imposed or annual limit can be carried forward to the five succeeding taxable years.

### **Proposed Legislation**

Under this bill, a taxpayer that earns Land Preservation Tax Credit would be allowed to transfer the credit to another corporate or individual taxpayer. The Department of Taxation would be required to develop and establish a process to allow taxpayers to sell unused amounts of the credit to other individuals and corporations. These purchasing individuals and corporations would be able to use the credit to reduce their Virginia income tax.

The bill would also provide a subtraction for any gain or income realized by a corporate or individual taxpayer that receives a transfer of the credit to the extent such income is included on the taxpayer's federal return.

### **Proposed Amendments**

The suggested amendments are intended to clarify the purpose of this bill.

### **Virginia Income Tax Credits – Transferability**

With limited exceptions, Virginia income tax credits are not transferable from one taxpayer to another. The Coalfield Employment Enhancement Tax Credit contained a provision when it was originally enacted in 1995 that permitted transfers of the credit. However, this transfer feature was repealed in 1996 and was replaced with a feature that made the credit refundable.

Also, legislation enacted in 1997 permitted taxpayers to elect a one time transfer of the Historic Rehabilitation Tax Credit for credits earned for projects certified by Department of Historic Resources prior to the final publication date of the regulations promulgated for the credit.

cc: Secretary of Finance

Date: 02/02/02/dtm

Document: S:\2002leg\WorkInProgress\OTPwork\House Bills\HB1322F161.doc