

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** R. Lee Ware, Jr.

2. **Bill Number** HB 450

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Senate Finance

4. **Title** Income Tax; Land Preservation Tax Credit

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would make several changes to the Land Preservation Tax Credit. First, the \$100,000 annual credit limitation would be removed. In addition, new requirements for qualified donations would be created; and a licensed engineer review would be required for certain qualified appraisals. This bill would also create a fee that taxpayers would be required to pay if they chose to transfer the credit. Finally, credit held by a taxpayer would be allowed to pass to his estate upon his death and the estate would be allowed to transfer such credits.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

The revenue impact of this bill is unknown, as there is no data available on which to base an estimate of how the removal of the \$100,000 limit will impact the amount of credits claimed. Because taxpayers will be able to use more than \$100,000 against their own liability, it is reasonable to assume that fewer credits will be carried over to subsequent years or transferred to other taxpayers.

9. Specific agency or political subdivisions affected:

Department of Taxation
Secretary of Natural Resources
Department of Conservation and Recreation
Department of Historic Resources

10. Technical amendment necessary: Yes.

In order to establish an effective date for this bill, the following technical amendment is recommended:

Page 2, Line 122, at the beginning of the line

Insert: 2. That the provisions of this act shall be applicable for taxable years beginning on and after January 1, 2007.

11. Other comments:

Current Federal Law

Individuals and corporations can claim a deduction for the fair market value of most types of property contributed to a charitable organization. Generally, a deduction is denied for contributions of a partial interest in real property, but an exception specifically allows a deduction for a qualified conservation contribution. A qualified conservation contribution can consist of the entire interest of the donor (e.g., fee simple interest) or a restriction on the use of the property (e.g., a conservation easement). In either case, the contribution must be exclusively for conservation purposes, and the conservation purpose must be protected in perpetuity.

Current Virginia Law

Individuals and corporations can claim an income tax credit equal to 50% of the fair market value for an unconditional donation in perpetuity 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 conveyance of a less-than-fee interest in real property must meet the requirements set out in I.R.C. § 170(h) for a qualified conservation contribution. The preservation purpose must be assured in perpetuity.

The maximum credit a taxpayer can claim in any taxable year is limited to the lesser of the total income tax imposed or \$100,000. The amount of credit earned in excess of tax imposed or annual limit can be carried forward to the five succeeding taxable years. In addition, a taxpayer that earns the Land Preservation Tax Credit for land donated on or after January 1, 2002, may transfer the credit to another corporate or individual taxpayer.

Proposal

This bill would make several changes to the Land Preservation Tax Credit. First, the \$100,000 annual credit limitation would be removed. The amount of credit that a taxpayer could claim in one year would continue to be limited by the amount of his tax liability, however.

In addition, this bill would create a fee that taxpayers would be required to pay to the Tax Commissioner if they chose to transfer the credit. The amount of this fee would be 1% of the value of the donated interest or \$5,000, whichever is less. The Department would be required to use the revenue generated by these fees to implement this bill.

This bill would also create several new requirements for qualified donations. First, qualified donations of a less-than-fee interest would be eligible for the credit if a statement were submitted to the Department describing how the donated interest meets the requirements of Internal Revenue Code ("IRC") § 170(h). This statement would be required to include a description of the conservation purpose or purposes served by the donation and the public benefit derived from such donation.

This statement would be submitted to the Department on a form developed by the Tax Commissioner in consultation with the Secretary of Natural Resources. A copy would be provided to the Department of Conservation and Recreation, which would be required to compile an annual report on qualified donations.

Qualified donations would not be allowed to include:

- A conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that holds one or more conservation easements; and the primary purposes or powers of which include protecting natural resources and the natural and open-space values of land, making land available for agricultural, forestal, recreational, or open-space use, maintaining or enhancing air or water quality, or preserving the historic, architectural or archaeological aspects of land.
- A donation or portion of a donation of an easement on, or other less-than-fee interest in, a historic building or a functionally related complex of historic buildings, unless such building or building complex is individually designated as a historic landmark by the Department of Historic Resources for listing in the Virginia Landmarks Register, and the easement or other interest imposed restrictions on all exterior surfaces of the building or principal historic buildings.

In addition, in order to be eligible as a qualified donation, a conveyance of a fee interest in real property would be required to result in the property being devoted to open-space use as defined for local real estate assessment purposes, but the preservation purpose of a fee simple conveyance would no longer have to be assured in perpetuity. The preservation purpose of a less-than-fee interest would continue to be subject to the in perpetuity requirement.

Qualified appraisals would be required to include a letter from a licensed engineer stating that the highest and best use determination for the property (i) meets the existing zoning

codes, or a letter from the appropriate locality that the proposed highest and best use would be acceptable to that political body; (ii) is physically and geographically possible considering slopes, flood plains, and soil conditions; and (iii) where the highest and best use for the property absent conservation is commercial or residential development, that existing roads serving the property are sufficient to support that type of development.

Finally, this bill would allow credits held by a taxpayer to pass to the estate of the taxpayer upon his death. The estate would be allowed to transfer such credits to other taxpayers.

The effective date of this bill is not specified.

Other Legislation

Senate Bill 93 would make numerous changes to the Land Preservation Tax Credit, including limiting the amount of the credit to the lesser of \$600,000 or 50% of the fair market value of the land or interest in land, modifying the method for determining the fair market value, limiting the types of land that would qualify, and allowing the credit to be used against the estate tax.

cc : Secretary of Finance

Date: 02/24/2006 AMS
HB450FE161