

# DEPARTMENT OF TAXATION

## 2008 Fiscal Impact Statement

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

3. **Committee** House Finance

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

2. **Bill Number** HB 849

**House of Origin:**

           **Introduced**

  X   **Substitute**

           **Engrossed**

**Second House:**

           **In Committee**

           **Substitute**

           **Enrolled**

**5. Summary/Purpose:**

This bill would make several changes in order to simplify the administration of the Land Preservation Tax Credit. First, it would allow TAX to disclose certain information related to adjustments of transferred credits and related assessments to both the transferor and transferee.

Second, it would allow the donor and any transferors and transferees to file an administrative appeal when there is a modification to the credit, even if they have not received an assessment. TAX would have the authority to consolidate appeals filed by different taxpayers if the applications involve adjustment to credits arising from the same transaction or occurrence.

Finally, because most large donations involve the use of pass-through entities, this bill would adopt several procedures similar to those used by the federal government. The statute of limitations would be extended for pass-through entities when a pass-through entity is being audited, and TAX would be required to send notice of certain administrative proceedings to the owners of the pass-through entity.

The provisions of this bill would be applicable to disclosures made in the course of assessing tax on or after July 1, 2008, and to administrative proceedings pending on or filed after July 1, 2008.

This is a Department of Taxation bill.

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

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

## **8. Fiscal implications:**

### Administrative Costs

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.

### Revenue Impact

This bill would have no revenue impact.

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

Department of Taxation

## **10. Technical amendment necessary: No.**

Representatives of the Virginia State Bar suggested that the bill be amended to eliminate references to consolidation of judicial actions that are within the province of the court’s authority to manage cases. The Bar also suggested amendments to ensure that consolidation of administrative appeals will not be sought or granted as a tactic to harass a party, delay the proceedings, or otherwise hinder tax administration. A substitute will be offered to incorporate these suggestions.

## **11. Other comments:**

### Background

TAX is currently prohibited from sharing confidential taxpayer information except under specified conditions. Consequently, TAX cannot share certain information with taxpayers who have sold or purchased the Land Preservation Tax Credit. For example, if TAX adjusts the appraised value of a donation and the credit earned by that donation, none of the information on the donor’s return can be disclosed to the purchaser of the credit even though TAX must assess additional tax (by disallowing all or a portion of the credit) to the purchaser. This has complicated administrative appeals of assessments related to purchased tax credits.

## Tax Equity and Fiscal Responsibility Act of 1982

The federal Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") was to modify the Economic Recovery Tax Act made several procedural changes to the tax treatment of partnership items. Among these changes was a requirement that partners be notified individually of the beginning of an administrative proceeding at the partnership level and of the final administrative adjustment resulting from such proceeding. This notice requirement does not apply to partnerships with more than 100 partners and an individual partner has less than one percent interest in the partnership profits.

### Proposal

This bill would make several changes in order to simplify the administration of the Land Preservation Tax Credit. First, it would modify the restrictions regarding taxpayer confidentiality. In the case of a transferor, TAX would be allowed to disclose to the transferee any confidential tax information that is deemed relevant to the eligibility or value of the tax credit that was transferred. For the transferee, TAX would be allowed to disclose to the transferor the amount of the transferred credit used or absorbed on the transferee's tax return when such information was deemed necessary.

Next, this bill would allow persons aggrieved by an action by TAX with respect to a transferred tax credit to file an administrative appeal when there is a modification to the credit, even if they have not received an assessment. TAX would have the authority to consolidate appeals filed by different taxpayers if the applications involve adjustment to credits arising from the same transaction or occurrence.

"Person aggrieved by an action with respect to a transferred credit or other tax attribute" would be defined to include the person who earned a credit or other tax attribute transferable under law who has transferred such credit or other tax attribute and any subsequent transferor or transferee of such credit or other tax attribute who is affected directly or indirectly by an assessment upon an adjustment to such credit or other tax attribute or by a formal notice of TAX's intent to adjust such credit or other tax attribute.

Finally, because most large donations involve the use of pass-through entities, this bill would adopt several procedures from TERFA. TAX would be required to provide notice to the members of a pass-through entity of the beginning of an administrative proceeding at the pass-through entity level with respect to a pass-through entity item, as well as the final pass-through entity administrative adjustment resulting from any such proceeding. TAX would not be required to send such notices to any owner who had less than a one-percent interest in the profits of the pass-through entity if the entity has more than 100 owners.

The statute of limitations would be extended for a pass-through entity when it is being audited to the date that is three years after the later of the last day for filing the pass-through entity return for the taxable years of the pass-through entity, as extended, or the date on which the pass-through entity return for such taxable year was filed.

The provisions of this bill would be applicable to disclosures made in the course of assessing tax on or after July 1, 2008, and to administrative proceedings pending on or filed after July 1, 2008.

### Similar Legislation

**House Bill 1283** would eliminate the Department of Conservation and Recreation verification of conservation value of land donations that will result in \$1 million or more in land preservation tax credits and would establish a review and administrative appeal process in which proposed conveyances of donations would be reviewed by the Department of Taxation for purposes of determining whether the proposed donation would qualify for a land preservation tax credit.

**Senate Bill 259** would eliminate the Department of Conservation and Recreation verification of conservation value of land donations resulting in \$1 million or more in tax credits if the grantee for the donation is the Virginia Outdoors Foundation.

**Senate Bill 641** would provide that the land preservation tax credit would equal sixty percent of the fair market value of any land that is conveyed for the purpose of a public park, public recreational facility, or public trail access easement.

cc : Secretary of Finance

Date: 1/21/2008 AMS  
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