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SENATE BILL NO. 1087

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact § 58.1-513 of the Code of Virginia and to amend the Code of Virginia by adding in Article 20.1 of Chapter 3 of Title 58.1 a section numbered 58.1-513.1, relating to the transfer of land preservation tax credits.

 Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-513 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 20.1 of Chapter 3 of Title 58.1 a section numbered 58.1-513.1 as follows:

§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under subsection C of § 58.1-322 shall be allowed for three years following the year in which the credit is taken. Any building which serves as the basis, in whole or in part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the basis, in whole or in part, for a tax credit under this article for a period of five years following the completion of the rehabilitation project on which the credit is based.

B. Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

C. 1. ~~Any~~ *Subject to the requirements of § 58.1-513.1, any* taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and the Department of Conservation and Recreation for their costs in implementing this article but in no event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis. The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies or organizations that are responsible for enforcing the conservation and preservation purposes of the donated interests. Distribution of such revenues shall be made annually by the Virginia Land Conservation Foundation proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations during the immediately preceding three-year period.

D. To the extent included in and not otherwise subtracted from federal adjusted gross income pursuant to § 58.1-322 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any amount of gain or income recognized by a taxpayer on the application of a tax credit under this article against a Virginia income tax liability.

E. The transfer of the credit and its application against a tax liability shall not create gain or loss for the transferor or the transferee of such credit.

F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S corporation, may appoint a tax matters representative, who shall be a general partner, member/manager

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59 or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall
60 be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits
61 have been allocated or transferred by the entity under this article with respect to those credits. In the
62 event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners,
63 members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part,
64 such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall
65 first make written demand for payment of any additional tax, together with interest and penalties, from
66 the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner
67 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18
68 (§ 58.1-1800 et seq.).

69 *§ 58.1-513.1. Transfer of tax credits to be conducted by a licensed transfer agent.*

70 *A. No tax credit under this article shall be transferred to other than an individual unless the transfer*
71 *is conducted by a transfer agent holding a current license issued by the Department of Taxation. The*
72 *Department shall maintain and publish a current registry of licensed transfer agents.*

73 *B. Licensed transfer agents shall not transfer a tax credit if the credit was determined based upon an*
74 *appraisal that was not in compliance with the requirements of this article or with valuation standards*
75 *established by the Department for determining the fair market value of a donation of land or any*
76 *interest in land. The development of the valuation standards and updates to the standards shall be*
77 *exempt from the Administrative Process Act (§ 2.2-4000 et seq.).*

78 *C. Every licensed transfer agent shall give bond to the Commonwealth for the faithful performance*
79 *of the duties placed upon him by this section, in a penalty to be fixed by the Tax Commissioner, in*
80 *whose office the bond shall be filed.*

81 *D. The Department shall establish the application procedures and the qualifications required for*
82 *persons and entities seeking licensure under this section, provided that all qualifications shall be*
83 *necessary to ensure either competence or integrity of licensed transfer agents. The application*
84 *procedures shall require applicants to provide documentation establishing a minimum level of expertise*
85 *in the valuation of donations made pursuant to this article. The Department is hereby authorized to*
86 *license qualified applicants as licensed transfer agents for the purposes described in this section. Any*
87 *person or entity licensed by the Department shall use only the standards established by the Department*
88 *in its review of proposals to transfer land preservation tax credits.*

89 *E. If a licensed transfer agent transfers a land preservation tax credit, the transfer agent shall*
90 *promptly provide written notice of the same to the Tax Commissioner. Such notice shall not preclude the*
91 *Department from contesting a credit claim under this article and disallowing the credits in whole or in*
92 *part.*

93 *F. The Tax Commissioner may revoke or suspend the license of, or impose a monetary penalty upon,*
94 *any transfer agent who repeatedly transfers land preservation tax credits that are subsequently*
95 *disallowed in whole or in part by the Department.*

96 *G. Any person or entity (i) denied a license by the Department or whose license is revoked or*
97 *suspended or (ii) imposed with a monetary penalty shall be entitled to a review of such action. Appeals*
98 *from such actions shall be in accordance with the provisions of the Administrative Process Act*
99 *(§ 2.2-4000 et seq.).*

100 *H. The Department may levy and collect fees for licensure that are sufficient to cover all direct*
101 *expenses for the administration of the licensure program described in this section.*