

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Emmett W. Hanger, Jr.

3. **Committee** Senate Finance

4. **Title** Transfers of land preservation tax credits

2. **Bill Number** SB 1087

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would require the use of a TAX-licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual.

This bill also allows TAX to revoke or suspend the license of, or impose a monetary penalty upon, any transfer agent who repeatedly transfers land preservation credits that are subsequently disallowed in whole or in part by TAX.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

7. No Fiscal Impact (See Line 8.)

8. Fiscal implications:

Administrative Impact

TAX will not require an appropriation to implement this bill because the transfer fees collected by TAX when land preservation tax credits are transferred can be used to fund the expenses that TAX and DCR incur to administer the credit program. TAX would use these fees for the costs to establish a licensing system, as well as the fees authorized by this bill to fund the ongoing direct costs of administering the licensing system.

Revenue Impact

This bill would have no impact on the amount of land preservation credit claimed.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Land Preservation Tax Credit

The Land Preservation Tax Credit is equal to forty percent of the fair market value of land or interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the taxpayer to a public or private conservation agency.

Beginning in calendar year 2007, the aggregate amount of Land Preservation Tax Credits that may be issued in any one year is subject to a cap. For 2007, the cap amount was \$100 million. Starting in calendar year 2008, the cap was increased for inflation, and the cap for 2011 is \$108,424,000.

Credits must be issued in the order that each complete application is received. If more than one application is received at the same time, the credits with respect to those applications must be issued in the order that the conveyances were recorded in the appropriate Virginia circuit court. If a credit requires verification of the conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the aggregate cap is reached for the calendar year, the credit shall be issued in the calendar year that the conservation value of the credit is verified.

The amount of the credit that may be claimed by each taxpayer is limited to \$50,000 for the 2009, 2010, and 2011 taxable years, and \$100,000 for the 2012 taxable year and for each taxable year thereafter. Any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 10 years. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any unused portion of a credit issued to a taxpayer may be carried forward for a maximum of 13 years.

A taxpayer may transfer an unused but otherwise allowable credit to another taxpayer. Any taxpayer who makes such a transfer is required to file a notification of the transfer with TAX. When a credit is sold, or allocated by a pass-through entity, a 2% fee is imposed on the credit value. The revenue is dedicated to the expenses incurred by TAX and DCR to administer the land preservation tax credit program.

For taxpayers to whom a credit has been transferred, any unused portion may be carried forward for a maximum of 11 years after the credit was originally issued. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any portion of a transferred credit may be carried forward for a maximum of 14 years after the credit was originally issued.

Valuation Requirements

The fair market value of qualified donations must be substantiated by a “qualified appraisal” who is licensed in Virginia. Any appraisal that, upon audit by TAX, is determined to be false or fraudulent, may be disregarded by TAX in determining the fair market value of the property. The appraisal must satisfy the criteria imposed by federal law to qualify for a charitable contribution deduction as well as the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation, and the regulations of the Virginia Real Estate Appraisal Board.

Proposed Legislation

This bill would require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual. Upon transfer of a land preservation credit, the licensed transfer agent must promptly provide notice to TAX. This notice would not preclude TAX from contesting a credit claim or disallowing credits.

TAX would be responsible for licensing transfer agents and would be required to maintain and publish a registry of licensed transfer agents. TAX would also establish application procedures for persons and entities seeking licensure and require applicants to provide documentation establishing a minimum level of expertise in the valuation of donations. Licensed transfer agents would be required to give bond to TAX for the faithful performance of duties, in a penalty to be fixed by TAX.

This bill would allow TAX to revoke or suspend the license of, or impose a monetary penalty upon, any transfer agent who repeatedly transfers land preservation credits that are subsequently disallowed in whole or in part by TAX. Any person or entity denied a license or whose license is revoked or suspended or imposed with a monetary penalty would be entitled to a review of such action, in accordance with the provisions of the Administrative Procedure Act.

TAX would also be entitled to levy and collect fees for licensure that are sufficient to cover all direct expenses for the administration of the licensure program.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1445 would limit the total amount of Land Preservation Tax Credits issued to any taxpayer to \$10 million annually.

House Bill 1820 would increase the annual Land Preservation Tax Credit cap to \$100 million, adjusted for inflation, plus any disallowed credits and would allow TAX to require a second appraisal from a different appraiser to substantiate the fair market value of any donation of land.

House Bill 2263 would include waterfront land used for commercial fisheries as property eligible for the land preservation tax credit.

Senate Bill 979 would decrease the tax credit threshold at which the conservation value of a donation is required to be verified by DCR from \$1 million to \$500,000.

Senate Bill 1088 would allow a donor of land or any interest in land to request a refund of unused land preservation tax credits with the Tax Commissioner for 90 percent of the face value of the credits.

Senate Bill 1153 would provide that a land preservation tax credit shall not be reduced by the amount of unused credits that could have been claimed in a prior year by the taxpayer but were unclaimed.

Senate Bill 1232 would require the use of a licensed transfer agent to transfer a land preservation tax credit to a taxpayer who is not an individual and would allow TAX to require a second appraisal from a different appraiser to substantiate the fair market value of any donation of land.

cc : Secretary of Finance

Date: 1/25/2011 KLC
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