DEPARTMENT OF TAXATION
2011 Fiscal Impact Statement

1. Patron Frederick M. Quayle

2. Bill Number SB 1153

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
X **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Land preservation tax credit

5. Summary/Purpose:

This bill would provide that a land preservation credit shall not be reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

Administrative Impact

TAX considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would result in a very small revenue loss, as taxpayers are generally allowed to claim unused land preservation credits from prior years.

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. Since calendar year 2008, the $100 million cap has been increased for inflation. For 2011, the cap is $108,424,000.

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.

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.

Credit Carryforward Policy

When taxpayers have earned several tax credits, they are free to claim them in the order that is most advantageous to them. Typically, that means claiming credits with no carryover provision first, then credits with carryovers that are about to expire, and then credits that can be carried over for several years. If a taxpayer fails to claim all of the credits he could have claimed, he has the normal three-year period to amend the return to claim unused credits.

This bill appears to be intended to reverse a policy that was explained in Public Document 99-48 (4/2/1999). In this case a taxpayer had not claimed a recycling credit in the year that it had been earned, and the three-year period for amending the return had expired. Although no refund could be granted for the expired year, TAX allowed the taxpayer to claim the credit for the purpose of claiming carryover credits in subsequent years for which amended returns could be filed. However, TAX required the carryover amounts to be reduced by the amount that could have been claimed in the years for which refunds were barred by the statute of limitations.

Virginia law allows a taxpayer to claim credits in any order they wish. Accordingly, the policy where taxpayers are required to reduce the carryforward amount would only apply to situations where a taxpayer had a tax liability in excess of the amount of credits claimed, not to situations where a taxpayer could have claimed a credit, but instead claimed a different credit.

Proposed Legislation

This bill would provide that a land preservation credit shall not be reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed. This would ensure that taxpayers who have land preservation tax credits that have been issued to them by TAX, allocated to them by a pass-through entity, or purchased by them, will not lose them if they accidentally or intentionally fail to claim some or all of the credits in any year to which they could have been carried before they expire.

It should be noted that the specific situation addressed in PD 99-48 (4/2/1999) cannot arise for land preservation credits after 2006. The recycling and many other credits must be reported on the return for the year in which the credit was earned in order to establish the existence of any credit to carry over to other years. Beginning in 2007, however, the land preservation tax credit requires taxpayers to apply for the credit, and requires TAX to issue credits in the order that complete applications are received, up to a specified annual cap. Therefore, a taxpayer that fails for any reason to apply for a credit before the cap is reached can never be allowed a credit for that taxable year. His application will be considered for issuance of a credit for a subsequent taxable year in which the cap has not been reached.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1820 would allow TAX to require a second appraisal as a condition of issuing land preservation tax credits and would not allow an application to be deemed complete until the fair market value of the donation has been determined.

Senate Bill 979 would require DCR to include information about riparian buffers in its annual report to the General Assembly.

Senate Bill 1232 would provide that, if TAX requests a second qualified appraisal, a land preservation credit application would not be deemed complete until the fair market value of the donation has been determined.

cc : Secretary of Finance

Date: 2/10/2011 KLC
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