

**DEPARTMENT OF TAXATION  
2018 Fiscal Impact Statement**

1. **Patron** C. Matthew Fariss
3. **Committee** Passed House and Senate
4. **Title** Land Preservation Tax Credits; transfer to a designated beneficiary

2. **Bill Number** HB 1460  
**House of Origin:**  
           **Introduced**  
           **Substitute**  
           **Engrossed**
- Second House:**  
           **In Committee**  
           **Substitute**  
  X    **Enrolled**

**5. Summary/Purpose:**

This bill would allow an individual taxpayer, upon his or her death, to transfer unused Land Preservation Tax Credits through a will, bequest, or other instrument of transfer to a designated beneficiary. If such taxpayer dies without a will, this bill would provide that any unused Land Preservation Tax Credits would be transferred to the next person who is eligible to receive according to Virginia's rules of intestate succession. The ability to transfer Land Preservation Tax Credits upon death would be limited to the individual taxpayer who originally earned such credits.

This bill would apply to transfers of unused credits upon the death of a taxpayer occurring on and after July 1, 2018, regardless of when such unused credits were earned.

6. **Budget amendment necessary:** No.
7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)
8. **Fiscal implications:**

Administrative Costs

The Department of Taxation (“the Department”) and the Department of Conservation and Recreation (“DCR”) consider implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would result in an unknown, likely minimal, negative General Fund revenue impact beginning in Fiscal Year 2019. This bill would allow for the transfer of individual unused Land Preservation Tax Credits to a transferee. Such transferee would then be permitted to use such credits on his or her income tax return. Under current law, individuals are not allowed to transfer their unused Land Preservation Tax Credits upon death, and, therefore, such credits may go unused.

To avoid the loss of unused Land Preservation Tax Credits upon their death, many individuals currently use an estate planning technique where such credits are held in trust rather than

being held directly by the individual. As a result, while it is unknown how many Land Preservation Tax Credits go unused as a result of the prohibition on transferring such credits held by individuals upon their death, the estimated amount is likely minimal.

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

Department of Taxation  
Department of Conservation and Recreation

**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 an 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. Taxpayers may claim the credit against the individual income tax and the corporate income tax. The amount of credits that may be claimed by each taxpayer per taxable year is limited to \$20,000 for Taxable Year 2017, and \$50,000 for Taxable Year 2018 and thereafter. The credit is subject to an annual credit cap of \$75 million.

Any taxpayer holding Land Preservation Tax Credits who is unable to use the credit may either carry the credit over to a subsequent year or transfer the unused credit for use by another taxpayer on their Virginia income tax return. If the taxpayer to whom the credit was originally issued does not transfer the credit, he or she may generally carry forward any unused portion of the credit for a maximum of 10 years. If the tax credit is transferred to another taxpayer, the taxpayer to whom such credit has been transferred may generally carry forward any unused portion for a maximum of 11 years after the credit was originally issued.

A fee of 2 percent of the value of the donated interest is imposed on any transfer arising from the sale of credits, and upon the distribution of credits to a member, manager, partner, shareholder, or beneficiary of a pass-through entity. Of the transfer fees collected, \$600,000 are required to be transferred to the General Fund. An amount not to exceed 50 percent of collected transfer fees is then allocated to the Department, Department of Conservation and Recreation, and Office of the Attorney General for each agency's respective expenses related to this credit. The remaining collected transfer fees are then transferred to the Virginia Land Conservation Fund.

Prohibition on Transferring Land Preservation Tax Credits Upon Death

In Public Document ("P.D.") 05-170 (12/05/2005), the Department held that Virginia law requires lifetime acts on the part of a taxpayer who wishes to transfer Land Preservation Tax Credits. Such ruling stated that it is the taxpayer holding the credit who must transfer the credit and that transferring taxpayer is required to file a notification with the Department after the transfer is completed. As a result, such credits cannot be transferred upon death of the credit holder. The Department has re-iterated this interpretation in subsequent rulings, most recently in P.D. 17-165 (09/13/017).

## Federal Charitable Contribution Deduction and Quid Pro Quo

For federal income tax purposes, taxpayers may claim a deduction for charitable contributions, including contributions of land or an interest in land. In 2011, the introduced version of House Bill 1820 included a provision that would have allowed the executor or administrator of an estate of a deceased taxpayer to transfer unused Land Preservation Tax Credits. During the 2011 session, the issue was raised that inheritability of a state income tax credit may create enough of a property right to allow the Internal Revenue Service ("IRS") to invoke the quid pro quo doctrine and deny a charitable contribution deduction. Under this doctrine, charitable contribution deductions are disallowed for the portion of a contribution made in consideration for goods or services provided to the donor.

In several unofficial memoranda, the IRS has opined that the transfer of a state tax credit is not generally sufficient to result in the denial of a charitable contribution deduction. However, if the attributes of a tax credit are such that it is deemed property received in exchange for a donation, the quid pro quo doctrine may be invoked. Inheritability is one of several factors to be considered in determining whether a tax attribute is property sufficient for the denial of the charitable contribution deduction. Because the IRS has not provided official guidance, this issue remains unresolved.

### Proposed Legislation

This bill would allow an individual taxpayer, upon his or her death, to transfer unused Land Preservation Tax Credits through a will, bequest, or other instrument of transfer. If such taxpayer dies without a will, this bill would provide that any unused Land Preservation Tax Credits would be transferred to the next person who is eligible to receive according to the Virginia's rules of intestate succession. However, if two or more persons are eligible to receive according to the intestate succession rules, the administrator of the taxpayer's estate would be required to choose one such person to whom to transfer such taxpayer's unused credit. The ability to transfer Land Preservation Tax Credits upon death would be limited to the individual taxpayer who originally earned such credits.

The two percent fee on Land Preservation Tax Credit transfers would not apply to a transfer of unused credits upon death. The carryover period for such transferred credits would not be extended; instead, such credits would be subject to the original applicable carryover period.

This bill would apply to transfers of unused credits upon the death of a taxpayer occurring on and after July 1, 2018, regardless of when such unused credits were earned.

cc: Secretary of Finance

Date: 3/2/2018 JJS  
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