

DEPARTMENT OF TAXATION

2008 Fiscal Impact Statement

1. **Patron** Harvey B. Morgan

2. **Bill Number** HB 1309

3. **Committee** Senate Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Income Tax: Riparian Forest Buffer
Protection for Waterways Credit

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would include grantor's trusts among the taxpayers eligible to claim the Riparian Forest Buffer Protection for Waterways Tax Credit. Currently, only individuals, corporations, partnerships, and electing small business corporations (S corporations) are eligible to claim this credit.

This bill would be effective for taxable years beginning on and after January 1, 2008.

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

6b. **Revenue Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2007-08	\$0	GF
2008-09	(\$45,000)	GF
2009-10	(\$45,000)	GF
2010-11	(\$45,000)	GF
2011-12	(\$45,000)	GF
2012-13	(\$45,000)	GF
2013-14	(\$45,000)	GF

7. **Budget amendment necessary:** Yes.

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8. **Fiscal implications:**

Administrative Costs

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

Revenue Impact

The number of grantor's trusts that have been unable to claim this credit is unknown. Based on an analysis of the historical number of credits claimed and the average credit amounts from taxable years 2003 through 2006 and assuming a maximum increase of thirty percent in the number of credits claimed due to the expanded definition, it is estimated that fifteen more credits may be claimed each year. This would result in a revenue loss of approximately \$45,000 per year.

9. Specific agency or political subdivisions affected:

Department of Taxation
State Forester

10. Technical amendment necessary: No.

11. Other comments:

Background

The Riparian Forest Buffer Protection for Waterways Tax Credit allows a tax credit to certain taxpayers who own land abutting a waterway and who forbear harvesting timber on certain portions of that land. The credit is equal to twenty-five percent of the value of the timber in the portion of the land retained as a buffer, but may not exceed \$17,500 or the total amount of income tax, whichever is less.

In Public Document 07-200 (11/30/2007), TAX ruled that trusts may not qualify for this credit. The reason for this was that the *Code of Virginia* sections allowing the credit, §§ 58.1-339.10 and 58.1-439.12, specify that only an individual or a corporation is allowed to claim it. A trust does not fall under either of those definitions in the *Code of Virginia*.

Grantor's Trusts

In general, a grantor's trust is created for the purpose of holding ownership to an individual's assets during an individual's lifetime, and for distributing those assets after the individual's death. When creating a grantor's trust, the grantor will place assets within the trust, but will retain substantial control over the assets. In addition, the grantor will be taxed on the trust's income, and the trust will be disregarded for tax purposes.

Therefore, although the trust owns the property, it is the individual who performs the act that is necessary in order to qualify for a tax preference. In the case of the Forest Buffer Protection for Waterways Tax Credit, for example, although it is the trust that owns the applicable land, it is the individual grantor who must decide to forbear from harvesting the timber in order for the Commonwealth to receive the benefit of the riparian buffer.

Proposal

This bill would add grantor's trusts to the definition of "individual" for the purposes of the Riparian Forest Buffer Protection for Waterways Tax Credit. In addition, it would change the term "taxpayer" to "individual" throughout *Va. Code* § 58.1-339.10.

This bill would be effective for taxable years beginning on and after January 1, 2008.

cc : Secretary of Finance

Date: 2/19/2008 AMS
HB1309FE161