DEPARTMENT OF TAXATION
2015 Fiscal Impact Statement

1. Patron R. Lee Ware, Jr.

2. Bill Number HB 1828

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

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

3. Committee House Finance

4. Title Land Preservation Tax Credit

5. Summary/Purpose:

This bill would limit the fiscal impact of the Land Preservation Tax Credit by reducing the annual credit cap and by limiting the amount of credit that may be claimed by each taxpayer annually. Under this bill, the annual Land Preservation Tax Credit cap would be reduced from $100 million to $85 million. This bill would limit the amount of credit that may be claimed by each taxpayer to $20,000 for Taxable Years 2015 and 2016, and to $50,000 for Taxable Year 2017 and thereafter.

This bill would prohibit the Department of Taxation ("the Department") from issuing any tax credit for a donation from any allocation or pool of tax credits attributable to a calendar year prior to the year in which the complete tax credit application for the donation was filed. This bill would also clarify that credits must be issued in the order that each complete application is filed.

Under this bill, no credit would be allowed for any land or interest in land conveyed on or after July 1, 2015, unless a complete application for tax credit with regard to the conveyance has been filed by December 31 of the year following the calendar year of the conveyance.

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 Costs

The Department has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have a positive revenue impact, beginning in Fiscal Year 2016. Limiting the annual amount of credit claimed by each taxpayer annually to $20,000 would have a positive annual revenue impact of $22.4 million in Fiscal Years 2016 and 2017. No budget amendment is needed because the Introduced Executive Budget includes this limitation. However, if this provision is not enacted, the budget would need to be adjusted to reduce the revenue estimate by $22.4 million in Fiscal Year 2016.

The provisions of this bill reducing the annual credit cap to $85 million, prohibiting the Department from issuing tax credits from any allocation or pool of tax credits from a prior year, and imposing a deadline on the submission of tax credit applications would have an unknown positive revenue impact, beginning as early as Fiscal Year 2016. Under current law, the Department will accept applications for conveyances made during prior years within the statute of limitations, and will issue credits under the credit cap for such prior years, to the extent that such cap amount is remaining. Because this bill would not allow the issuance of credits under any remaining credit cap from a prior year, it would prevent the issuance of credits in excess of the $85 million credit cap in any calendar year. This would have an unknown positive revenue impact, beginning as early as Fiscal Year 2016.

Because the bill reduces the amount that each taxpayer may claim to $20,000 in Taxable Years 2015 and 2016, and then increases the amount to $50,000 in Taxable Years 2017 and thereafter, there would be an unknown revenue loss beginning in Fiscal Year 2018. It is impossible to determine the amount of revenue loss that would occur beginning in Fiscal Year 2018, due to the multiple factors that affect the amount of Land Preservation Tax Credit that is claimed each year. Any amount of revenue loss resulting from the increase in the amount that each taxpayer may claim, would be offset to some extent by the other changes made by this bill to the Land Preservation Tax Credit program.

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 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.

To qualify for the Land Preservation Tax Credit, a taxpayer must submit a credit application to the Department after completing the donation. If a credit application requests a credit of $1 million or more, or if the real property that is the subject of a donation of at least $250,000 was partitioned from another parcel of land that received a tax credit within three years of the donation, then a copy of the application must also be filed with the Department of Conservation and Recreation.

Annual Credit Cap

Beginning in the 2007 calendar year, the aggregate amount of Land Preservation Tax Credits that may be issued in any one year is subject to a cap. For calendar year 2007, the cap amount was $100 million. For calendar years 2008 through 2013, the $100 million cap was increased for inflation. In 2013, the General Assembly enacted legislation (Chapter 798, 2013 Acts of Assembly) that reinstated the $100 million cap for calendar year 2014 and thereafter, without any adjustments for inflation.

Land Preservation Tax 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.

In 2011, the General Assembly passed legislation (Chapter 296, 2011 Acts of Assembly) that requires that any credits previously issued but subsequently disallowed or invalidated be reissued in a later calendar year. Under this law, the maximum amount of credits that may be issued for a calendar year is equal to the indexed cap amount plus any credits previously issued but subsequently disallowed or invalidated by the Department.

Currently, there is no deadline by which taxpayers must submit credit applications. If the Department receives an application for a conveyance made during a prior calendar year, the credit will be issued under the cap for the year of conveyance, to the extent that there is a remaining cap amount for that year. Such credit amount may then be claimed on the tax return filed for the year of conveyance. If there is no remaining cap amount for the year of conveyance, the Department will issue the credit under the next year for which a remaining cap amount is available.

Claiming and Transferring Credits

Any taxpayer holding a Land Preservation Tax Credit 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. 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 generally 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.

Recommended Appropriation to Conservation Funds

When the General Assembly reinstated the annual cap of $100 million, it also included language requiring that the Governor recommend an annual appropriation from the General Fund in an amount equal to the difference between an indexed Land Preservation Tax Credit cap amount for the calendar year and $100 million. Such appropriation is prohibited from exceeding $20 million and is to be distributed as follows: 80 percent to the Virginia Land Conservation Fund, 10 percent to the Civil War Site Preservation Fund, and 10 percent to the Virginia Farmland Preservation Fund.

Proposed Legislation

This bill would limit the fiscal impact of the Land Preservation Tax Credit by reducing the annual credit cap and by limiting the amount of credit that may be claimed by each taxpayer annually. Under this bill, the annual Land Preservation Tax Credit cap would be reduced from $100 million to $85 million. This bill would limit the amount of credit that may be claimed by each taxpayer annually to $20,000 for Taxable Years 2015 and 2016, and to $50,000 for Taxable Year 2017 and thereafter. Taxpayers affected by the annual limitations on the amount of credit claimed would be permitted to carry over any unused portion of credit for an extended period of up to 13 taxable years, or 14 taxable years for transferred credits.

This bill would prohibit the Department from issuing any tax credit for a donation from any allocation or pool of tax credits attributable to a calendar year prior to the year in which the complete tax credit application for the donation was filed. This bill would also clarify that credits must be issued in the order that each complete application is filed.

Under this bill, no credit would be allowed for any land or interest in land conveyed on or after July 1, 2015, unless a complete application for tax credit with regard to the conveyance has been filed by December 31 of the year following the calendar year of the conveyance. Solely for purposes of this condition, this bill would deem any application timely filed if the Tax Commissioner has given written notice to the donor that the preparation of a second qualified appraisal is warranted, provided the application was otherwise complete as of the filing deadline.

For purposes of determining whether a complete application has been filed by the deadline and of determining the order of credits, the postmark or confirmation of shipment would determine the date of filing for applications filed by mail or by a recognized commercial delivery service.

This bill would also amend the calculation of the appropriation recommended by the Governor in the Introduced Executive Budget so that it would be equal to the difference between an indexed Land Preservation Tax Credit cap amount for the calendar year and $85 million, rather than $100 million.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1012 would eliminate the income tax subtraction for gain derived from the sale of land for open space use.

Senate Bill 1019 would limit the amount of credit claimed by each taxpayer annually to $20,000 for Taxable Years 2015 and thereafter.

cc : Secretary of Finance

Date: 1/22/2015 KLC
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