

# DEPARTMENT OF TAXATION

## 2017 Fiscal Impact Statement

1. **Patron** Mark D. Obenshain

3. **Committee** Senate Finance

4. **Title** Pass-Through Entity Withholding Tax;  
Claiming Land Preservation Tax Credits

2. **Bill Number** SB 1286

**House of Origin:**

           **Introduced**

  X   **Substitute**

           **Engrossed**

**Second House:**

           **In Committee**

           **Substitute**

           **Enrolled**

### 5. **Summary/Purpose:**

The Department of Taxation ("the Department") understands that the Patron intends on offering a substitute. This fiscal impact statement is based on the substitute.

This bill would create an exemption from the two percent Land Preservation Tax Credit transfer fee for the distribution of credits to a nonresident owner of a pass-through entity when such credits are applied by the pass-through entity to the pass-through entity withholding tax. Credits distributed to resident owners and nonresident owners who are not subject to the pass-through entity withholding requirement would continue to be subject to the transfer fee.

The effective date of this bill is not specified.

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"), the Department of Conservation and Recreation, and the Virginia Land Conservation Foundation consider implementation of this bill as routine, and do not require additional funding.

#### Revenue Impact

This bill would have a negative impact on non-General Funds that are currently being collected from the Land Preservation Tax Credit transfer fee. Because credits claimed against the pass-through entity withholding tax would not be subject to the Land Preservation Tax Credit transfer fee, this bill would have a negative impact on non-General Fund revenues beginning in Fiscal Year 2018. Such fees are used to pay the costs of administering the Land Preservation Tax Credit program, as well as provide

funding to the Virginia Land Conservation Foundation. During Taxable Year 2016, the Department collected approximately \$400,000 in Land Preservation Tax Credit transfer fees from pass-through entities. This bill would reduce the amount collected.

The transfer fees are used to fund the administrative costs incurred by the Department of Taxation, the Department of Conservation and Recreation, and the Office of the Attorney General in administering the Land Preservation Tax Credit program. Fee collections during the past three years have not been sufficient to cover all of the expenses incurred by these agencies. Further decreasing the fee amounts would further decrease the amount of funding for this program, as well as the amount paid to the Virginia Land Conservation Foundation to further its conservation purposes.

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

Department of Taxation  
Department of Conservation and Recreation  
Office of the Attorney General  
Virginia Land Conservation Foundation

**10. Technical amendment necessary:** No.

**11. Other comments:**

Pass-Through Entity Withholding Tax

A pass-through entity is required to pay the pass-through entity withholding tax if it has taxable income from Virginia sources and must allocate any portion of such income to at least one nonresident owner. The amount of tax that must be withheld is equal to five percent of the share of taxable income from Virginia sources that is allocable to each nonresident owner. In determining the amount of pass-through entity withholding tax due, a pass-through entity may apply any Virginia tax credits, including the Land Preservation Tax Credit, earned by the entity that it distributes to its nonresident owners. Each nonresident owner is then allowed a credit for his share of the tax withheld by the pass-through entity.

For purposes of the pass-through entity withholding tax, "income from Virginia sources" is defined as items of income, gain, loss, and deduction attributable to the ownership, sale, exchange, or other disposition of any interest in real or tangible personal property in Virginia or attributable to a business, trade, profession, or occupation carried on in Virginia or attributable to intangible personal property employed in a business, trade, profession, or occupation carried on in Virginia. If the entire business of a pass-through entity is not deemed to have been transacted or conducted within the Commonwealth, then "income from Virginia sources" means that portion of the pass-through entity's income that has been allocated and apportioned to Virginia in the same manner as corporations.

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 2016, and \$50,000 for Taxable Year 2017 and thereafter. The credit is subject to an annual credit cap of \$75 million.

Any taxpayer with unused Land Preservation Tax Credits may transfer such unused credits to another taxpayer for use on their Virginia income tax return. 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.

#### Proposed Legislation

This bill would create an exemption from the two percent Land Preservation Tax Credit transfer fee for the distribution of credits to a nonresident owner of a pass-through entity when such credits are applied by the pass-through entity to the pass-through entity withholding tax.

Credits distributed to resident owners and nonresident owners who are not subject to the pass-through entity withholding requirement would continue to be subject to the transfer fee. Because credits transferred to a pass-through entity's resident owners would remain subject to the transfer fee, this bill would treat Land Preservation Tax Credits allocated to nonresident owners more favorably than credits allocated to Virginia residents.

The effective date of this bill is not specified.

#### Similar Bills

**Senate Bill 963** would extend the \$20,000 limitation on the amount of Land Preservation Tax Credits that a taxpayer may claim per taxable year so that it will apply to Taxable Year 2017.

**Item 3-6.04 of the Introduced Executive Budget** would increase the Land Preservation Tax Credit transfer fee from 2 percent to 3 percent of the value of a donated interest.

cc : Secretary of Finance

Date: 1/30/2017 MTH  
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