

Virginia Department of Taxation

Land Preservation Credit



What is the Land Preservation Tax Credit ?



Land Preservation Tax Credit (LPC)

- Virginia allows an income tax credit for 40 percent of the value of any land or interest in land located in Virginia that is conveyed for the purpose of:
 - agricultural and forestal use;
 - open space;
 - natural resource and/or biodiversity conservation;
 - land, agricultural, watershed and/or historic preservation; or
 - as an unconditional donation by the landowner/taxpayer to a public or private conservation agency.

Credit Requirements

Governed by United States Internal Revenue Code § 170 and Virginia Code §58.1-511 to 513

- Qualified donations include Fee Simple conveyances or less-than-fee interest conveyances in perpetuity (i.e. Conservation Easements).
- Fair Market Value of donation must be established by qualified appraiser, licensed in Virginia, in a qualified appraisal as determined by IRS§170 and Uniform Standards of Professional Appraisal Practice (USPAP).
- The taxpayer has the burden of proof to establish the FMV.

Tax Benefits of a Conservation Donation

- Federal Income Tax Deduction – Charitable Donation up to 30% of adjusted gross income.
- Virginia State Income Tax Credit – Land Preservation Credit at 40% of the fair market value of the donated interest.
- Federal Estate Tax Reduction and Exclusion – May reduce land values for estate tax purposes
- Local Property Taxes – Property taxes may be reduced

Conservation Easements

- Are an exception to the general rule that a donor must give up their entire interest to qualify for a charitable donation under the Internal Revenue Code.
- Generally not enforceable under common law.
- State statutes are typically based on the Uniform Conservation Easement Act and must be strictly complied with.
- Easement restrictions must be enforceable in perpetuity.
- Subsequent transfers of the property must be subject to the easement restrictions.
- The easement must be donated to an “Eligible Donee”.

Tax Credit Considerations:

- Conservation tax credits are only one tool available to states to conserve land.
- The effectiveness of a tax credit depends on the mix of conservation incentives available.
- Other conservation tools include:
 - Direct Grant Programs
 - Land Acquisition Programs
 - Purchase of Development Rights
 - Dedicated Revenue Sources
- Almost 90 percent of the land conservation in Virginia in the last decade was through the LPC.

Tax Credit Considerations

- Benefits:
 - Does not require the state to acquire full title to the land.
 - Significant tax benefits to donors can greatly increase the amount of land conserved.
 - Funding by legislatures for tax credits tends to be more stable than direct funding options.
- Limitations:
 - No public access
 - Limited, if any control over the type or location of land conserved.
 - Limited up-front negotiation on value.

State Tax Credit Programs

- 15 states currently have tax credit programs
 - 4 Transferable
 - 2 Refundable
 - 1 Both
 - 8 Neither
- Credit percentage ranges from 25% to 55%.

Legislative History

- The Land Preservation Tax Credit was enacted in 2000.
- The Credit became transferrable in 2002.
- The Credit was given a \$100 million cap in 2007*.



Beginning with calendar year 2008, the \$100 million cap increased by an amount equal to \$100 million multiplied by the percentage by which the Consumer Price Index (CPI-U) for the 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period ending August 31, 2006.

Statewide LPC CAP



Tax Year

CAP AMOUNT

2007	\$ 100,000,000
2008	\$ 102,287,081
2009	\$ 106,647,000
2010	\$ 106,845,000
2011	\$ 108,424,000
2012	\$ 111,054,000

Use of Tax Credits

- Use of Credits
 - Credit holders may use the credit themselves on their income tax return:
 - 2012 and thereafter, a taxpayer may use up to \$100,000 per year;
 - Any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 10 consecutive additional taxable years; and
 - Unused credits may be transferred or sold to other taxpayers.
 - Transfer Fee of 2% of the value of the donation.



Transfer Fee

- 50% of the revenues generated by the 2% transfer fee are used by TAX and the Department of Conservation and Recreation (DCR) for implementation of the LPC program.
- The remainder of the fee revenue is transferred to the Virginia Land Conservation Foundation and distributed to entities responsible for enforcing the conservation purposes of the donated interests.

Applying for the Credit



- Make a qualifying donation (Fee Simple or Easement)
- Register donation with TAX
 - Submit application with copy of qualified appraisal
- Obtain verification of conservation value from DCR when application for Credits request \$1 million or more.

Review of the Credit



LPC Review Process



- The Department reviews all LPC applications to assure overall compliance with requirements of the Code of Virginia and IRS regulations.
- Since the LPC was enacted, over 2800 qualifying donations have been made.
- The Department routinely selects about 10% of the approved applications for further review using specific requirements.

Review Statutes

- Virginia Code § 58.1-512 allows Tax to
 - audit any credit claimed during the statutory time limits,
 - disregard appraisals found to be false or fraudulent,
 - refer appraisers to the Real Estate Appraiser Board for disciplinary action; and/or,
 - disallow future appraisals signed by appraisers who have falsely or fraudulently overstated the value of the contributed property.

LPC Review Process (con't)

- In some cases, TAX may secure its own appraisal before issuing tax credits:
 - TAX must notify donor within 30 days;
 - Application is deemed not complete until the fair market value of the donation has been finally determined by the Tax Commissioner;
 - Tax Commissioner shall make a final determination within 180 days of notifying the donor unless the donor has filed an appeal; and
 - The donor has the right to appeal any decision of the Department in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

LPC Review Process (con't)



- Over 95% of the LPC applications are accepted as filed.
- In cases where the value has been challenged, almost all have been settled through the administrative process without litigation.
- Since the tax credit was enacted in 2000, less than 3% of the donations have been challenged.

Frequent Appraisal Errors

- Highest and Best Use conclusion is not supported by report documentation
- Appraiser “assumes” the property can be developed in a manner without relevant documentation. This is speculative and violates USPAP.
- Property is zoned for one classification (agricultural) and report assumes that another zoning could be easily obtained.
- Reports dated outside requirements for a qualified appraisal under IRS regulations.
- Many adjustments are made without any explanation.
- IRC §170 requirements
- Lack of Affidavit

Administrative Challenges

- Per donation Credit Unlimited
- Credit based upon subjective FMV appraisal
- Reviews are normally done after Credits are issued
- Single Credit transferable to hundreds of taxpayers

Statistics



Donation History Data

Tax Year	# of Credits	# of Acres	Credit Allocated
2000-01	222	31,161	\$52,969,772
2002	217	35,256	\$62,770,663
2003	140	28,151	\$75,306,207
2004	238	50,049	\$142,134,720
2005	279	56,171	\$155,866,375
2006	457	94,135	\$247,138,494
2007	254	59,323	\$100,000,000
2008	224	60,199	\$102,287,084
2009	228	63,447	\$106,647,000
2010	144	38,545	\$106,845,000
2011	367	75,028	\$108,424,000
2012	31	5,153	\$10,029,441
Grand Total	2801	596,618	\$1,270,418,756

* Through August 15, 2012

Where are donations being made?

Locality	# of Donations	# of Acres	Credit Value
Fauquier	255	51,236	\$ 134,912,843
Albemarle	232	51,737	\$ 139,042,441
Loudoun	212	27,419	\$ 196,527,482
Rockbridge	164	36,253	\$ 33,798,251
Rappahannock	107	17,535	\$ 29,040,749
Clarke	78	8,432	\$ 19,037,822
Augusta	76	13,861	\$ 13,176,912
Orange	74	18,113	\$ 34,006,469
Bath	61	21,199	\$ 24,827,945
Montgomery	51	9,306	\$ 9,638,837
Green	50	8,900	\$ 16,223,201
Accomack	49	10,726	\$ 19,853,877
Madison	49	10,998	\$ 14,299,106
Grayson	45	7,536	\$ 9,324,070

Contact Us

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