

## EXECUTIVE SUMMARY:

# LAND PRESERVATION TAX CREDIT

(INCOME TAX)

NOVEMBER, 2014

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

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- PREFERENCE:

Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia

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- SUMMARY:

The Virginia Land Conservation Incentives Act of 1999 provides an income tax credit for the donation of land, or an easement on land, for conservation purposes. The credit is equal to 40 percent of the fair market value of the donation, not to exceed \$100,000 in a taxable year. Unused credits may be carried over for a maximum of 10 years, or may be transferred to another taxpayer. The aggregate number of credits that may be offered in a calendar year is capped at \$100 million.

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- REVENUE IMPACT:

Available credits are capped at \$100 million per year; the revenue impact may be less if the maximum number of credits are not subscribed in a given year.

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- JOINT SUBCOMMITTEE RECOMMENDATION:

The Joint Subcommittee recommended continuing the land preservation tax credit in its current form for now, but suggested that further work with stakeholders to reform the program would be warranted.

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PREFERENCE REPORT:  
**LAND PRESERVATION TAX CREDIT**  
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## Preference Description

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The Virginia Land Conservation Incentives Act of 1999 ("the Act"), found in Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia, provides a tax credit for individuals and corporations who make a charitable contribution of land, or an interest in land, to a conservation agency. The full text of the Act can be found in Appendix A.

The conveyance must be for the purpose of agricultural and forestal use, open space, natural resource, or biodiversity conservation, or for land, agricultural, watershed, or historical preservation. The donation must be unconditional. In order to qualify, the donation may be a fee simple (i.e. a donation of the entire parcel, where ownership changes hands and with no conditions attached). More often, however, the land owner retains possession of the parcel but places an easement in perpetuity on the land limiting future development and use of the land -- thus conserving the land. In order to qualify for a credit under the Act, the easement must comply with the requirements of the U.S. Internal Revenue Code § 170 (h), which sets forth various definitions related to conservation donations. The donation of the land or easement must be made to a public or private conservation agency, which means a Virginia governmental body (such as the Virginia Outdoors Foundation)<sup>1</sup> or a private, not-for-profit charitable corporation that is organized for natural resources, land conservation, or historic preservation purposes, that has tax-exempt status under federal law as a public charity, and has the power to acquire, hold, and maintain land (or interests in land) for such purpose.

The available credit is equal to 40% of the fair market value of the land or the interest in land that was conveyed. The amount of the credit that may be claimed by a taxpayer cannot exceed \$100,000 in a taxable year, and it is not refundable so it may not exceed the amount of Virginia income tax due in that taxable year. Any unused portion of the credit may be carried over for a maximum of 10 consecutive

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<sup>1</sup> See Chapter 18 (§ 10.1-1800 et seq.) of Title 10.1 of the Code of Virginia.

years.<sup>2</sup> The maximum aggregate amount of credits available in taxable years beginning in taxable year 2013 is \$100 million.

For purposes of determining the fair market value of the interest conveyed, a qualified appraisal must be prepared by a qualified appraiser who is licensed in the Commonwealth and submitted to the Department of Taxation.<sup>3</sup> The Department of Taxation is required to establish guidelines that incorporate the requirements of federal law for qualified conservation contributions and the Uniform Standards of Professional Appraisal Practice.<sup>4</sup> The fair market value determination cannot exceed the "highest and best use" of the property. Subdivision C of § 58.1-512.1 provides that the highest and best use (i) is consistent with **existing** zoning requirements; (ii) is one for which the property is adaptable to and needed in the reasonably near future in the area in which the property is located; (iii) considers land conditions; and (iv) has sufficient existing roads serving the property to support the commercial or residential development that is the highest and best use proposed for the property.

To apply for the credit, the taxpayer files an application with the Department of Taxation after the donation is completed. The application must include a description of the conservation purpose being served by the donation, the fair market value of the land or interest being donated in the absence of the easement or restriction, the public benefit that will be derived from the donation, the extent that water quality best management practices will be implemented on the property, and whether the property is fully or partially forested and a forest management plan is included in the terms of the donation. If the donation is a less-than-fee interest, the application must also include an affidavit describing how the donation meets the requirements of federal law for qualified conservation contributions.<sup>5</sup> Before a credit in the amount of \$1 million or more may be issued, the Director of the Department of Conservation and Recreation must verify the conservation value of the donation, using criteria adopted by the Virginia Land Conservation Foundation.<sup>6</sup>

In lieu of using the credits himself, a taxpayer making a conservation donation may also transfer the credits to another taxpayer. In the event of a transfer, a fee is assessed at a rate of two percent of the value of the donated interest. Up to half of these revenues may be used by the Department of Taxation and the Department of Conservation and Recreation for costs associated with implementing the act. The remainder of the revenues are transferred to the Virginia Land Conservation Fund for distribution to public and private conservation agencies responsible for enforcing the conservation and preservation purposes of the donated interests.<sup>7</sup>

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<sup>2</sup> In taxable years 2009, 2010, and 2011, the maximum amount that could be claimed by a taxpayer for the year was lowered to \$50,000, and taxpayers affected by this reduction were authorized to carry over any unused portion of the credit for 13 consecutive taxable years. See subdivision C 1 of § 58.1-512 of the Code of Virginia.

<sup>3</sup> See subdivision B of § 58.1-512.

<sup>4</sup> The guidelines are available at the Virginia Department of Taxation website at <http://www.tax.virginia.gov/site.cfm?alias=LandPreservationTaxCredit#Appraisers>.

<sup>5</sup> See subdivision D of § 58.1-512.

<sup>6</sup> See Subdivision D 3 of § 58.1-512. The Land Conservation Foundation Guidelines can be found at [http://www.dcr.virginia.gov/virginia\\_land\\_conservation\\_foundation/documents/lptccrit08.pdf](http://www.dcr.virginia.gov/virginia_land_conservation_foundation/documents/lptccrit08.pdf).

<sup>7</sup> See subdivision C 2 of § 58.1-513.

## Preference Purpose

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Section 58.1-510 of the Code of Virginia states that "[t]he purpose of this act is to supplement existing land conservation programs to further encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces and forested resources."

A 2012 report of the Joint Legislative Audit and Review Commission (JLARC) concluded that, after analyzing the change in land preservation since the adoption of the Act, the tax credit is effectively achieving its public policy goal of promoting land preservation.<sup>8</sup> A separate JLARC report noted that the number of acres conserved in Virginia between taxable year 2002 and taxable year 2011 increased 24 percent, and approximately 76 percent of these additional acres were conserved through the land preservation tax credit program.<sup>9</sup>

## Legislative History & Background

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The Virginia Land Conservation Incentives Act was originally enacted in 1999.<sup>10</sup> Like the current law, the Act allowed for a taxpayer to receive an income tax credit for a donation of land, or an interest in land, to a public or private conservation agency. The amount of the credit at the time was equal to 50 percent of the fair market value of the land or the easement. The total amount of the credit claimed by a taxpayer could not exceed \$50,000 for tax year 2000, \$75,000 for tax year 2001, or \$100,000 for tax years 2002 and thereafter. The credit was not refundable, and unused credits could be carried over for five consecutive taxable years. At the time of enactment, the credit was not transferrable.

The law has been subject to numerous amendments since 1999. The major changes made to the Act include:

2002: For qualified donations made on or after January 1, 2002, the General Assembly authorized the transfer of credits from a taxpayer entitled to the credit to other taxpayers. The same bill also allows the taxpayer transferring the credits to subtract from Virginia taxable any income recognized from the transfer.<sup>11</sup>

2005: Existing law required that the fair market value of a donation be substantiated by a qualified appraisal prepared by a qualified appraiser. The 2004 amendments augmented this by requiring that the appraisal be signed by the appraiser, who must be licensed in Virginia, and that a copy of the appraisal must be submitted to the Department of Taxation. If the appraiser falsely or fraudulently overstates the fair market value, the Department may disregard the appraisal, may disallow further appraisals by the appraiser, and may refer the appraiser to the Real Estate Appraiser Board for disciplinary action.<sup>12</sup>

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<sup>8</sup> See Senate Document No. 4 (2012), "Review of the Effectiveness of Virginia Tax Preferences," at p.50.

<sup>9</sup> See Senate Document No. 3 (2012), "Dedicated Revenue Sources for Land Conservation in Virginia," at iv.

<sup>10</sup> Chapters 968 and 983 of the Acts of Assembly of 1999.

<sup>11</sup> Chapter 347 of the Acts of Assembly of 2002.

<sup>12</sup> Chapter 940 of the Acts of Assembly of 2005.

2006: Most significantly, the 2006 legislation imposed a \$100 million cap on the aggregate amount of credits that could be issued in a calendar year, beginning with calendar year 2007. Beginning with calendar year 2008, the cap would be increased by the percentage by which the consumer price index for the 12-month period ending the preceding August 31 exceeds the consumer price index for the 12-month period ending August 31, 2006. Any donation eligible for a credit of \$1 million or more must be reviewed by the Department of Conservation and Recreation to verify the conservation value of the land. The General Assembly also lowered the amount of the credit available from 50 percent of the fair market value of the donation to 40 percent of the value. The legislation imposed a transfer fee of two percent, or \$10,000 (whichever is less), for all credit transfers, with the revenues to be used by the Department of Taxation and the Department of Conservation and Recreation for administration of the land preservation tax credit program.<sup>13</sup>

2009: Due to budget shortfalls, the total amount of credits that a taxpayer could claim in a taxable year was lowered from \$100,000 to \$50,000 for taxable years 2009 and 2010. To offset this limitation, such taxpayers are authorized to carry over tax credits for a total of 12 years instead of 10.<sup>14</sup>

2010: The 2010 Session of the General Assembly adopted numerous amendments to the land preservation tax credit program, including:

- The limitation of allowing a taxpayer to only claim \$50,000 per year in credits, instead of \$100,000, was continued for taxable year 2011. Accordingly, individuals affected by the limitation would be allowed to carry over the tax credits for a total of 13 years.<sup>15</sup>
- The fee for transfer of credits is changed to a flat two percent of the value of the credits. Previously it was set at two percent, or \$10,000, whichever was less. Additionally, the legislation changed the distribution of the revenues generated by the transfer fees. The amount transferred to the Department of Taxation and the Department of Conservation and Recreation is limited to a maximum of 50 percent of the revenues. The remainder is transferred to the Virginia Land Conservation Fund for distribution to public and private conservation agencies responsible for enforcing the conservation purposes of donated lands and interests.<sup>16</sup>
- In its annual report to the chairmen of the House Committee on Appropriations, House Committee on Finance, and Senate Committee on Finance, the Department of Conservation and Recreation is directed to provide an estimate of the number of acres of land protected by less-than fee interests under the program that are used for production agriculture and silviculture. This should include information, if available, as to whether the lands have onsite operational best management practices.<sup>17</sup>

2011: The 2011 Session of the General Assembly adopted numerous amendments to the land preservation tax credit program, including:

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<sup>13</sup> Chapters 4 and 5 of the Acts of Assembly of 2006, Special Session I.

<sup>14</sup> Chapters 12 and 510 of the Acts of Assembly of 2009.

<sup>15</sup> Chapter 246 of the Acts of Assembly of 2010.

<sup>16</sup> Chapters 229 and 248 of the Acts of Assembly of 2010.

<sup>17</sup> Chapter 384 of the Acts of Assembly of 2010.

- In addition to the \$100 million annual cap on the total amount of credits that may be issued, plus the annual consumer price index increase, legislation provides that the cap shall also include the amount of any credits that were previously issued by the Department, but later disallowed or invalidated.<sup>18</sup>
- The Department of Taxation is authorized to request a second appraisal on donated property. The Department must notify the donor in writing within 30 days of applying for the tax credits that a second appraisal is being requested, and the Department must make a final determination on the issuance of the credits within 180 days of such notice.<sup>19</sup>
- A taxpayer who has been issued credits shall not have the amount of his unused credits reduced if he declines to claim any of those credits in an eligible tax year. This appears to be a technical amendment, as the Code of Virginia did not previously state that the amount of unused credits would be reduced.<sup>20</sup>
- In its annual report to the chairmen of the House Committee on Appropriations, House Committee on Finance, and Senate Committee on Finance, the Department of Conservation and Recreation is directed to provide information on riparian buffers required by deed restriction on land qualifying for tax credits.<sup>21</sup>

2012: The General Assembly provided that the revenues generated by the transfer fee and distributed to the Virginia Land Conservation Fund shall not be distributed to federal governmental entities.

2013: The 2013 Session of the General Assembly removed the annual consumer price index increase from the total aggregate cap of credits that may be issued in a calendar year, leaving the cap at \$100 million annually. However, the \$100 million shall continue to be annually indexed, and the Governor would be required to include in his budget bill submission (or his amendments to the general appropriations act in effect) a recommended appropriation from the general fund that would be equal to the difference of the indexed amount and \$100 million, not to exceed \$20 million per year, as follows: 80 percent of the appropriation to the Virginia Land Conservation Fund, of which at least 50 percent must be used for acquisitions with public access; 10 percent to the Civil War Site Preservation Fund; and 10 percent to the Virginia Farmland Preservation Fund.

## Revenue Impact

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A review of the revenue impact of the land preservation tax credit is slightly more complicated than that of some other preferences, as it also necessarily involves discussion of the number of acres donated, as well as the value and location of said acreage. Additionally, because the tax credit may be carried over and transferred, the award of credits in a particular tax year has revenue impacts that may be spread

<sup>18</sup> Chapters 212 and 296 of the 2011 Acts of Assembly.

<sup>19</sup> Id.

<sup>20</sup> Chapter 377 of the 2011 Acts of Assembly.

<sup>21</sup> Chapter 672 of the 2011 Acts of Assembly.

out over the course of a decade. So while the amount of credits allocated in a particular tax year may be tracked, the revenue impact to the Commonwealth might be larger, based upon credits allocated but unused in previous years. The charts below provide perspective on the credits requested, allocated, and claimed. Unless otherwise indicated, the data is current through October, 2014.

**General Donation History**

<b>Tax Year</b>	<b># of Credits</b>	<b># of Acres</b>	<b>Credit Allocated</b>
2000-03	579	94,568	\$ 191,046,642
2004	238	50,049	\$ 142,134,720
2005	280	56,172	\$ 155,872,625
2006	460	94,281	\$ 247,783,994
2007	254	59,323	\$ 100,000,000
2008	224	60,199	\$ 102,287,081
2009	229	63,447	\$ 106,647,006
2010	145	38,545	\$ 106,845,000
2011	367	75,028	\$ 108,424,000
2012	224	44,722	\$ 60,068,308
2013	222	62,467	\$ 77,392,083
2014	10	1,406	\$ 9,891,985
<b>Grand Total</b>	<b>3,232</b>	<b>700,207</b>	<b>\$ 1,408,393,444</b>

Large Donations (> \$1,000,000) Data

<b>Tax Year</b>	<b># of Credits</b>	<b># of Acres</b>	<b>Credit Requests</b>
2000-03	24	11,717	\$ 82,853,233
2004	28	12,478	\$ 84,608,471
2005	33	16,648	\$ 86,795,747
2006	56	24,667	\$ 123,422,820
2007	13	5,227	\$ 26,595,400
2008	20	15,830	\$ 41,399,398
2009	20	20,942	\$ 49,391,312
2010	17	7,611	\$ 73,427,487
2011	12	3,632	\$ 29,997,040
2012	8	4,090	\$ 13,151,200
2013	14	8,279	\$ 24,936,258
2014	1	189	\$ 8,421,160
Grand Total	246	131,310	\$ 644,999,526

Breakdown of Large Donations Data

<b>Appraised Value</b>	<b># of Credits</b>	<b># of Acres</b>	<b>Credit Requested</b>
\$2.0M-\$2.9M	74	32,147	\$ 88,157,977
\$3.0M-\$3.9M	63	36,410	\$ 95,164,138
\$4.0M-\$4.9M	30	14,864	\$ 58,239,692
\$5.0M-\$9.9M	43	22,905	\$ 136,585,390
>\$10.0M	36	24,984	\$ 266,852,329
Grand Total	246	131,310	\$ 644,999,526

Additional Breakdown of Large Donation Data

<b>Tax Year</b>	<b>% of Credits</b>	<b>% of Acres</b>	<b>% of Credit Requested</b>
2000-03	4%	12%	43%
2004	12%	25%	60%
2005	12%	30%	56%
2006	12%	26%	50%
2007	5%	9%	27%
2008	9%	26%	40%
2009	9%	33%	46%
2010	12%	20%	69%
2011	3%	5%	28%
2012	4%	9%	22%
2013	6%	13%	32%
2014	10%	13%	85%

Comparative Donation Data

<b>Type</b>	<b># Credits</b>	<b># Acres</b>	<b>Appraised Value</b>	<b>Fair Market/Acre</b>
Large Donation	246	131,310	\$ 1,423,658,671	\$ 10,842
Small Donation	2,986	568,897	\$ 1,728,905,937	\$ 3,039
Grand Total	3,232	700,207	\$ 3,152,564,608	\$ 4,502

Annual Land Preservation Credit Cap

<b>Tax Year</b>	<b>Cap Amount</b>
2007	\$100,000,000
2008	\$102,287,081
2009	\$106,647,000
2010	\$106,845,000
2011	\$108,424,000
2012	\$111,054,000
2013	\$100,000,000
2014	\$100,000,000

Location of Donations

<b>Locality</b>	<b># of Donations</b>	<b>Acres</b>	<b>Credit Value</b>
Fauquier	280	54,406	\$141,953,843
Albemarle	265	56,802	\$150,634,915
Loudoun	232	30,476	\$215,042,676
Rockbridge	178	38,690	\$ 43,818,811
Rappahannock	119	20,053	\$ 32,879,749
Clarke	88	9,410	\$ 20,049,122
Augusta	86	16,045	\$ 15,322,912
Orange	85	20,823	\$ 38,956,988
Bath	71	24,366	\$ 26,869,345
Montgomery	59	10,850	\$ 12,180,452
Madison	57	12,239	\$ 15,492,261
Greene	56	9,462	\$ 17,179,601
Grayson	52	8,562	\$ 10,618,516
Accomack	51	11,414	\$ 20,170,081

Transfer History Data

<b>Tax Year</b>	<b># of Recipients</b>	<b>Amt Transferred</b>	<b>% of Total</b>
2002 - 2006	11,779	\$ 605,302,352	89%
2007	2,796	\$ 93,381,108	93%
2008	2,960	\$ 86,741,090	95%
2009	3,789	\$ 100,218,434	94%
2010	3,845	\$ 86,866,902	81%
2011	3,530	\$ 97,783,914	90%
2012	1,698	\$ 46,886,173	78%
2013	1,078	\$ 38,634,255	50%
2014	30	\$ 956,016	10%
<b>Grand Total</b>	<b>31,505</b>	<b>\$ 1,156,770,244</b>	<b>85%</b>

Estimated Land Preservation Credits Remaining (as of September 2014)

<b>Tax Year</b>	<b>Granted Amt</b>	<b>Unclaimed Amt</b>	<b>% Unclaimed</b>	<b>Count</b>	<b>Exp. Year</b>
2007	\$ 100,000,000	\$ 13,831,433	14%	520	2017
2008	\$ 102,287,081	\$ 9,136,776	9%	476	2018
2009	\$ 106,647,000	\$ 11,408,225	11%	537	2019
2010	\$ 106,845,000	\$ 27,717,403	26%	598	2020
2011	\$ 108,424,002	\$ 24,890,046	23%	1,080	2021
2012	\$ 59,777,529	\$ 27,551,218	46%	905	2022
2013	\$ 77,006,582	\$ 63,925,156	83%	1,036	2023
2014	\$ 9,635,176	\$ 9,635,176	100%	25	2024
<b>TOTAL</b>	<b>\$ 670,622,373</b>	<b>\$ 188,095,433</b>	<b>28%</b>	<b>5,177</b>	

## Other Federal & State Tax Incentives

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Thirty five states do not provide tax incentives for conservation and land preservation efforts, and instead rely on grants and land acquisition to achieve these goals. This section outlines the approaches that have been adopted by the federal government and the fourteen other states that have adopted tax incentives for conservation.

### Federal Income Tax Deduction

The federal government has allowed a charitable income tax deduction for donation of a conservation easement since 1964. Internal Revenue Code § 170(h) sets forth the criteria for eligibility for the deduction. Essentially, a donation is qualified if a real property interest (including a restriction in perpetuity on the use of the property) is donated to a qualified organization exclusively for conservation purposes. A qualified organization is generally a land trust or a governmental entity. "Conservation purpose" is defined very broadly to include (i) preservation of land for recreational or educational use of the public, (ii) protection of the natural habitat of fish, wildlife, or plants, (iii) the preservation of open space, including farmland and forest land, or (iv) the preservation of historically important land or a certified historic structure.

Generally, a taxpayer is allowed to deduct up to 30 percent of the value of the donation, up to 30 percent of the taxpayer's income. The taxpayer can spread the deduction over an additional five years.<sup>22</sup> These are the same parameters that apply to any deduction for a non-cash charitable donation. An "enhanced easement incentive" was available to allow a deduction up to 50 percent of the taxpayer's income generally, and up to 100 percent of the taxpayer's income for qualified ranchers and farmers making a donation. The enhanced incentive also allowed the deduction to be taken over a period of 15 years. This enhanced program expired on December 31, 2013; however, there have been efforts to renew the incentive program.<sup>23</sup>

In Virginia, a taxpayer is not required to add-back the amount deducted for the donation federal income tax purposes to his state adjusted gross income, and if the donation qualifies, the taxpayer may also participate in the Virginia land preservation tax credit program.

### Other States

In addition to Virginia, fourteen other states offer a tax incentive for the donation of land and easements for conservation purposes.<sup>24</sup> Until last year, North Carolina also offered a land conservation tax credit. However, tax reform legislation signed into law in July, 2013 repealed the credit as one piece of comprehensive changes adopted to the North Carolina tax code.

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<sup>22</sup> Internal Revenue Code § 170 (b) (1) (A).

<sup>23</sup> The House of Representatives passed HR 4719 on July 17, 2014, but as of the drafting of this report on November 4, 2014, the Senate had not taken up the proposal.

<sup>24</sup> Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Maryland, Massachusetts, Mississippi, New Mexico, New York, and South Carolina.

Looking at a few key areas of comparison, only three other states -- Colorado, Georgia, and New Mexico -- allow land preservation tax credits to be transferred. The percentage of the fair market value of the donation allowed as a credit varies from 25 percent to 55 percent. Virginia is the most generous state allowing a taxpayer to claim up to \$100,000 per year in tax credits (not to exceed tax liability), and the ability to carryover unused credits for ten years -- allowing a taxpayer to claim up to \$1 million total. Other states caps for an individual taxpayer range from \$5,000 per year for a total of ten years,<sup>25</sup> to \$500,000 total for a corporate donor,<sup>26</sup> to an annual maximum of \$52,500 that can be rolled over until the entire credit is used.<sup>27</sup> Only three other states appear to provide aggregate caps on the total number of credits that may be issued. Arkansas has capped their relatively new tax credit at \$500,000 total; Colorado is currently capped at \$45 million per year; and Delaware has a \$1 million per year cap and a \$10 million total cap.

**Arkansas** adopted a program in 1995 aimed providing tax credits for taxpayers engaged in the creation and restoration of wetlands and riparian zones. The Arkansas Private Wetland and Riparian Zone Creation and Restoration Incentives Act was amended in 2009 to also allow for tax credits for the donation of easements in wetland and riparian zones. The very targeted program allows an income tax credit of 50 percent of a qualified easement's appraised value, up to \$50,000 total. A taxpayer may only claim a maximum of a \$5,000 credit per year, but may carry forward unused credits for a period of ten years. The credits are not transferable. In order to apply for an allocation of credits, a taxpayer must pay an application fee of three percent of the anticipated amount of credits, or a minimum of \$100. The total amount of credits available for easements is capped at \$500,000.<sup>28</sup>

**California** has had a tax credit program since 2001, although it has been suspended for periods due to fiscal downturns in the state. The current program is active, although it is set to expire June 30, 2015. Eligible donations apply for a credit of 55 percent of the value of the donation, which may be carried over for eight years. The credit is not transferable. A taxpayer must apply to be granted the credits, and a state or local agency must provide general funds to the state to replace any revenues lost to a granted tax credit. One such method to replenish the general fund is through the use of authorized bonds. In total, California has issued \$48.2 million in tax credits since 2001.<sup>29</sup>

**Colorado** offers a taxpayer a credit valued at 50% of the fair market value of a qualified donation, up to a maximum of \$375,000. The credit may be carried over for up to 20 years, or may be transferred to another taxpayer. The law allows for a refund of the credit, but only in years that end with a budget surplus. This refund provision has only been applied in 2000, 2001, and 2005. The program is currently capped at \$45 million per year for the aggregate amount of credits issued. Colorado's tax credit program has come under scrutiny in recent years for a lack of oversight and abuses due to inflated appraisals and

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<sup>25</sup> See Arkansas.

<sup>26</sup> See Georgia.

<sup>27</sup> See South Carolina.

<sup>28</sup> Arkansas Code § 26-51-1501 et seq.

<sup>29</sup> California Public Resources Code § 37000 et seq.

questionable easements. The Office of the State Auditor completed a comprehensive review of the program in 2012, and reforms are in the process of being implemented.<sup>30</sup>

**Connecticut** has a limited tax credit program available only to corporate income taxpayers. A corporation is eligible for a credit equal to 50 percent of a qualified donation, with a 10 year carry over allowance. A taxpayer may not use credits that exceed 70 percent of the taxpayer's tax liability. The credits are not transferable.<sup>31</sup>

**Delaware's** credit is equal to 40 percent of the fair market value of the qualified donation. The maximum tax credit available to a taxpayer is \$50,000, and unused credits may be carried over for a period of five years. The credits are not transferable. The aggregate number of credits available annually is capped at \$1 million, and the program is capped in its entirety at \$10,000,000.<sup>32</sup>

**Florida** does not have a state income tax, so its tax incentive is structured differently from other states. If a Florida resident places land under a conservation easement, the land is exempt from state property taxes. Land may be placed under perpetual easement that is at least 40 acres (unless there are special environmental features of the property), or a voluntary ten year covenant to restrict development may be placed on the land. For lands with the ten-year covenant, a recapture mechanism will be developed for back taxes. The law also provides for "fiscally-constrained" counties to be compensated by the state for the loss of revenues from the property taxes.<sup>33</sup>

**Georgia** allows a taxpayer to claim a credit equal to 25 percent of the value of a qualified donation, up to a maximum of \$250,000 for individual taxpayers and \$500,000 for corporations. Unused credits may be carried over for a period of ten years, and beginning in 2011, may be transferred to other taxpayers. Unlike many other states, if a tax payer has also availed himself of the federal deduction for conservation donations, that deduction must be added back into state taxable income before a credit can be claimed for the same donation. Georgia is also the first state to require that any nongovernmental entities receiving conservation donations be accredited in order for the donor to be eligible for the state tax credit.<sup>34</sup>

**Iowa** offers a tax credit equal to 50 percent of the qualified donation, with a maximum credit of \$100,000. The credit is not transferable, but unused portions may be carried over for 20 years. For donations valued in excess of \$200,000, the portion ineligible for the tax credit may be deducted from taxable income as a charitable donation.<sup>35</sup>

**Maryland** allows a taxpayer to claim credits equal to \$5,000 per year for 15 years (for a maximum of \$80,000), based on the value of the donation. The credit is not transferable. The credit is only available

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<sup>30</sup> Colorado Revised Statutes § 39-22-522. See also "Conservation Easement Tax Credit Performance Audit," September 2012, Office of the State Auditor.

<sup>31</sup> Connecticut Code § 12-217dd.

<sup>32</sup> Delaware Code Title 30 § 1801 et seq.

<sup>33</sup> Florida Chapter 2009-157.

<sup>34</sup> Official Code of Georgia Annotated § 48-7-29.12.

<sup>35</sup> Iowa Code § 422.11(W).

for donations of easements, and not fee simple donations. A donor may also be eligible for a credit against property taxes if the easement protects unimproved, non-commercial land.<sup>36</sup>

**Massachusetts** adopted a tax credit program in 2009 that did not go into effect until January 1, 2011. Donors may receive 50 percent of the fair market value of the donation, up to \$50,000. Unused credits may be carried over for 10 years, but are not transferable. The program is capped at \$2 million per year.<sup>37</sup>

**Mississippi** has a very narrow program in place for conservation tax credits. A taxpayer may receive a non-transferable credit equal to 50 percent of the value of a donated easement on lands that protect stream bank habitats and stability and protect high biodiversity sites. A taxpayer is limited to a lifetime cap of \$10,000 under the program, and may carry forward unused credits for ten years.<sup>38</sup> Mississippi also provides a credit of \$5.50 per acre, annually, for private lands made available for habitat or recreational purposes.<sup>39</sup>

**New Mexico** allows a taxpayer to claim a credit equal to 50 percent of the value of a qualified donation, not to exceed \$250,000. Unused credits may be carried over for 20 years, or may be transferred.<sup>40</sup>

**New York** has a somewhat unique tax structure, and its conservation tax credit reflects this. A qualified donation may allow a taxpayer to reduce his state income tax by 25 percent of the school district, county, and town real estate taxes paid on the property, up to \$5,000 per year. The credit is not transferable, but is refundable.

**South Carolina** requires that a landowner qualify for, and claim, a charitable gift of land on his federal income tax return in order to qualify for a state tax credit. The taxpayer may claim a credit equal to 25 percent of the donation, not to exceed \$52,500 per year and \$250 per acre. The credit is not transferable, but may be carried forward indefinitely until the full credit is claimed.<sup>41</sup>

## Other Information

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As noted in the 2012 JLARC report on revenue sources for land conservation in the Commonwealth, the vast majority of funding comes from utilization of the land preservation tax credit. However, local, state, and federal grant programs exist that also support conservation efforts.

- The Virginia Land Conservation Fund, established pursuant to § 10.1-1020 et seq., is administered by the Virginia Land Conservation Foundation. The special, non-reverting fund is used acquire title and rights, including development rights, to property for conservation purposes, and for providing grants to other agencies for the acquisition of such property and

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<sup>36</sup> Maryland Code 10-723.

<sup>37</sup> Chapter 509 (2008).

<sup>38</sup> Mississippi Code § 27-7-22.21.

<sup>39</sup> Id. at § 27-7022.22.

<sup>40</sup> New Mexico Code § 7-2-18.10.

<sup>41</sup> South Carolina Code § 12-6-3515 et seq.

rights. The Land Conservation Fund is also used to provide grants to localities for the purchase of development rights programs.

- The Open-Space Lands Preservation Trust Fund, established pursuant to § 10.1-1801.1, is administered by the Virginia Outdoors Foundation. The special, non-reverting fund is used to aid localities in acquiring open-space easements, and to assist persons conveying open-space and conservation easements with the costs of conveyance, such as legal costs, appraisal costs, or all or part of the value of the easement.
- Civil War Battlefield Preservation Grants, administered by the Department of Historic Resources, is used for easements on and fee-simple acquisitions of Civil War battlefields.
- Farmland Preservation Grants, administered by the Virginia Department of Agriculture and Consumer Services, provides grants to localities for purchase of development rights programs that compensate landowners who voluntarily place agriculture conservation easements on their property.

Between 2002-2011, these four programs received approximately \$42 million dollars, compared with \$1.2 billion dollars of land preservation tax credits issued during the same time period.

In addition to these grant programs, several other tax preferences have goals that overlap with those of the land conservation tax credit. For example, the Code of Virginia also allows for an income tax subtraction for gains on the sale of land for open space use,<sup>42</sup> a tax credit for the purchase of conservation tillage equipment,<sup>43</sup> a riparian waterway buffer tax credit,<sup>44</sup> and an agricultural best management practice credit.<sup>45</sup>

## Joint Subcommittee Recommendation

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The Joint Subcommittee recommended continuing the land preservation tax credit in its current form for now, but suggested that further work with stakeholders to reform the program would be warranted.

Preference Report Compiled by Staff from the Virginia Division of Legislative Services and the Virginia Department of Taxation

<sup>42</sup> See §§ 58.1-322(c)(22), 58.1-402(c)(16).

<sup>43</sup> See §§ 58.1-334, 58.1-432.

<sup>44</sup> See §§ 58.1-339.10, 58.1-439.12.

<sup>45</sup> See §§ 58.1-339.3, 58.1-439.5.

### **Article 20.1. Virginia Land Conservation Incentives Act of 1999**

#### **§ 58.1-510. Purpose.**

The purpose of this act is to supplement existing land conservation programs to further encourage the preservation and sustainability of Virginia's unique natural resources, wildlife habitats, open spaces and forested resources.

1999, cc. [968](#), [983](#).

#### **§ 58.1-511. Definitions.**

For the purposes of the article:

"Interest in real property" means any right in real property, including access thereto or improvements thereon, or water, including but not limited to an open-space easement or conservation easement, provided such interest complies with the requirements of the U.S. Internal Revenue Code § 170 (h), partial interest, mineral right, remainder or future interest, or other interest or right in real property.

"Land" or "lands" means real property, with or without improvements thereon; rights-of-way, water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property.

"Public or Private Conservation Agency" means any Virginia governmental body, or any private not-for-profit charitable corporation or trust authorized to do business in the Commonwealth and organized and operated for natural resources, land conservation or historic preservation purposes, and having tax-exempt status as a public charity under the U.S. Internal Revenue Code of 1986, as amended, and having the power to acquire, hold and maintain land and/or interests in land for such purposes.

1999, cc. [968](#), [983](#); 2005, c. [940](#).

#### **§ 58.1-512. Land preservation tax credits for individuals and corporations.**

A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ [58.1-320](#) and [58.1-400](#), an amount equal to 50 percent of the fair market value of any land or 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 landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be 40 percent of the fair market value of the land or interest in land so conveyed.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § [58.1-512.1](#) and substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions. The value of the donated interest in land that qualifies for credit under this section, as determined according to appropriate federal law and regulations, shall be subject to the limits established by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the Commonwealth of Virginia as provided in § [54.1-2011](#), and a copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed, the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § [54.1-2013](#), which may include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to be false or fraudulent, may be disregarded by the Department in determining the fair market value of the property and the amount of tax credit to be allowed under this section.

C.1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § [58.1-513](#), shall not exceed \$50,000 for 2000 taxable years, \$75,000 for 2001 taxable years, \$100,000 for each of 2002 through 2008 taxable years, \$50,000 for each of 2009, 2010, and 2011 taxable years, and \$100,000 for 2012 taxable years and for each taxable year thereafter. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated until fully expended. A credit shall not be reduced by the amount of unused credit that could have been claimed in a prior year by the taxpayer but was unclaimed. For taxpayers affected by the credit reduction for taxable years 2009, 2010, and 2011, any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 13 consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance of a fee interest in real property or the conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United States Internal Revenue Code of 1986, as amended.

The Department of Conservation and Recreation shall compile an annual report on qualified donations of less-than-fee interests accepted by any public or private conservation agency in the respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the House Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance. In preparing such report, the Department of Conservation and Recreation shall consult and coordinate with the Department of Taxation and the Departments of Forestry and Agriculture and Consumer

Services to provide an estimate of the number of acres of land currently being used for "production agriculture and silviculture" as defined in § [3.2-300](#) that have been protected by qualified donations of less-than-fee interests. This report shall include information, when available, on land qualifying for credits being used for "production agriculture and silviculture" that have onsite operational best management practices, which are designed to reduce the amount of nutrients and sediment entering public waters. In addition, the report shall include information, when available, on riparian buffers, both vegetated/forested buffers and no-plow buffers, required by deed restriction on land qualifying for credits in order to protect water quality. This information shall be reported in summary fashion as appropriate to preserve confidentiality of information. Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition of "holder" in § [10.1-1009](#) and (ii) holds one or more conservation easements acquired pursuant to the authority conferred on a "holder" by § [10.1-1010](#).

3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits shall not be a qualified donation under this article.

4. Qualified donations shall be eligible for the tax credit herein described if such donations are made to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and is controlled by an organization described in § 509(a)(2).

5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable organization that is a "holder" as defined in § [10.1-1009](#), the credit shall not be allowed until the charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i) subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in § [10.1-1009](#), or subject to the conveyance in perpetuity of an open-space easement, as that term is defined in § [10.1-1700](#), or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable organization.

D. The issuance of tax credits under this article for donations made on and after January 1, 2007, shall be in accordance with procedures and deadlines established by the Department and shall be administered under the following conditions:

1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms prescribed by the Department in consultation with the Department of Conservation and Recreation. If the application requests a credit of \$1 million or more or if the donation meets the conditions of

subdivision 3 c, then a copy of the application shall also be filed with the Department of Conservation and Recreation by the taxpayer. The application shall include, but not be limited to:

- a. A description of the conservation purpose or purposes being served by the donation;
- b. The fair market value of land being donated in the absence of any easement or other restriction;
- c. The public benefit derived from the donation;
- d. The extent to which water quality best management practices will be implemented on the property;  
and
- e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy also provided to the Department of Conservation and Recreation.

3. a. No credit in the amount of \$1 million or more shall be issued with respect to a donation unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

b. For purposes of determining whether a credit requires verification of the conservation value, the credits allowed under this article with respect to donations of any other portion of a recorded parcel of land within the preceding 11 years shall be aggregated with the credit claimed for the current donation. This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a qualified donation are not affiliated with the person or entity seeking credit for the current donation of a different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not previously made a qualified donation for any portion of the parcel and is not an immediate family member of any such owners.

c. If (i) the real property that is the subject of the donation was partitioned from or part of another parcel of land and any other portion of such parcel, or any land partitioned from such parcel of land, has been allowed a tax credit under this article (or an application for tax credit is pending) within three years of such donation and (ii) the tax credit that would otherwise be allowed to the donor for such donation is at least \$250,000, then no credit under this article shall be issued with respect to such donation described in clause (i) unless the conservation value of the donation has been verified by the Director of

the Department of Conservation and Recreation. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action. Nothing in this subdivision shall be construed or interpreted (a) as allowing additional tax credit for any land or interest in land previously conveyed for which tax credit has already been allowed under this article or (b) affecting the validity of any tax credit allowed under this article for a prior conveyance of any land or interest in land.

4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue more than the maximum allowed for the calendar year. The maximum amount of credits that may be issued in a calendar year shall be \$100 million plus any credits previously issued under this article but subsequently disallowed or invalidated by the Department. Credits previously issued but subsequently disallowed or invalidated shall be reissued in a subsequent calendar year. All credits shall be issued in the order that each complete application is received. If within 30 days after an application for credits has been filed the Tax Commissioner provides written notice to the donor that he has determined that the preparation of a second qualified appraisal is warranted, the application shall not be deemed complete until the fair market value of the donation has been finally determined by the Tax Commissioner. The Tax Commissioner shall make a final determination within 180 days of notifying the donor, unless the donor has filed an appeal. The donor shall have the right to appeal any decision of the Department in accordance with the provisions of Chapter 18 (§ [58.1-1800](#) et seq.). If more than one complete application is received at the same time, the credits with respect to those applications shall be issued in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In the event that 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 maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4 a shall be increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (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.

c. Beginning with calendar year 2013, the maximum amount of credits that may be issued in a calendar year shall not exceed \$100 million. Beginning with the submission due on or before December 20, 2013, and in each year thereafter, the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § [2.2-1509](#) or in his amendments to the general appropriation act in effect submitted pursuant to subsection E of § [2.2-1509](#) a recommended appropriation from the general fund equal to the difference between the amount calculated pursuant to subdivision b and \$100 million, but not more than \$20 million, to be allocated as follows: 80 percent to the Virginia Land Conservation Fund to be used in accordance with § [10.1-1020](#), with no less than 50 percent of such appropriation to be used for fee simple acquisitions with public access or acquisitions of easements with public access; 10 percent to

the Civil War Site Preservation Fund to be used in accordance with § [10.1-2202.4](#); and 10 percent to the Virginia Farmland Preservation Fund to be used in accordance with § [3.2-201](#).

5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of this article, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, and 2011. Such a taxpayer shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 13 consecutive taxable year carryforward provisions of this article.

b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 11 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for any taxpayer affected by the credit limitation for taxable years 2009, 2010, and 2011. Such a taxpayer may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 14 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer.

6. Neither the verification of conservation value by the Department of Conservation and Recreation nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit under this article.

E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the burden of proof shall be on the taxpayer to show that the fair market value and conservation value at the time of the qualified donation is consistent with this section and that all requirements of this article have been satisfied.

1999, cc. [968](#), [983](#); 2005, c. [940](#); 2006, Sp. Sess. I, cc. [4](#), [5](#); 2009, cc. [12](#), [510](#); 2010, cc. [246](#), [265](#), [321](#), [384](#); 2011, cc. [212](#), [296](#), [377](#), [672](#); 2013, c. [798](#).

#### **§ 58.1-512.1. Determination of fair market value of donation.**

A. Each appraisal estimating the value of any donation upon which credits are to be based shall employ proper methodology and be appropriately supported by market evidence. The Department of Taxation shall establish and make publicly available guidelines that incorporate, as applicable (without limitation), requirements under § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Uniform Standards of Professional Appraisal Practice (USPAP). The Department shall update the guidelines as necessary as determined by the Tax Commissioner. Such guidelines shall be exempt from the Administrative Process Act (§[2.2-4000](#) et seq.) but the Department shall provide for adequate public

participation, including adequate notice and opportunity to provide comments on the proposed guidelines.

B. For purposes of any appraisal for a conveyance under the provisions of this article, the value for any structures or other improvements to land shall be determined in accordance with law. For any otherwise qualified donation of a less-than-fee interest under this article, however, no more than 25% of the total credit allowed shall be for reductions in value to any structures and other improvements to land.

C. The fair market value of any property with respect to a qualified donation shall not exceed the value for the highest and best use (i) that is consistent with existing zoning requirements; (ii) for which the property was adaptable and needed or likely to be needed in the reasonably near future in the immediate area in which the property is located; (iii) that considers factors such as, by way of illustration and not limitation, slopes, flood plains, and soil conditions of the property; and (iv) for which existing roads serving the property are sufficient to support commercial or residential development in the event that is the highest and best use proposed for the property. Any appraisal submitted in support of an application for a credit under this article shall include an affidavit by the appraiser that to the best of his knowledge and belief the valuation complies with this section and shall set forth in the affidavit or refer to the specific portion of the appraisal setting forth the facts and basis for this knowledge and belief.

2006, Sp. Sess. I, cc. [4](#), [5](#).

**§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.**

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under subsection C of § [58.1-322](#) shall be allowed for three years following the year in which the credit is taken. Any building which serves as the basis, in whole or in part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under § [58.1-339.2](#) for a period of five years following the donation on which the credit is based; and any building which serves as the basis for the tax credit allowed under § [58.1-339.2](#) shall not serve as the basis, in whole or in part, for a tax credit under this article for a period of five years following the completion of the rehabilitation project on which the credit is based.

B. Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

C.1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and the Department of Conservation and Recreation for their costs in implementing this article but in no event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis. The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies or organizations, excluding federal governmental entities, that are responsible for enforcing the conservation and preservation purposes of the donated interests. Distribution of such revenues shall be made annually by the Virginia Land Conservation Foundation proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations, excluding federal governmental entities, during the immediately preceding three-year period.

D. To the extent included in and not otherwise subtracted from federal adjusted gross income pursuant to [§58.1-322](#) or federal taxable income pursuant to [§ 58.1-402](#), there shall be subtracted any amount of gain or income recognized by a taxpayer on the application of a tax credit under this article against a Virginia income tax liability.

E. The transfer of the credit and its application against a tax liability shall not create gain or loss for the transferor or the transferee of such credit.

F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S corporation, may appoint a tax matters representative, who shall be a general partner, member/manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated or transferred by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners, members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 ([§ 58.1-1800](#) et seq.).

1999, cc. [968](#), [983](#); 2002, c. [347](#); 2004, c. [635](#); 2005, c. [255](#); 2006, Sp. Sess. I, cc. [4](#), [5](#); 2010, cc. [229](#), [248](#); 2012, c. [232](#).

## Appendix B: Summary of Public Comment

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Three-hundred and eight total comments were received via written (305) and in-person (3) communications regarding the Land Preservation Tax Credit.

- Of the 308 comments, 237 were e-mails generated by a coordinated communications campaign and were nearly identical. It is unclear which organization or individual initiated the campaign. These messages each read as follows:<sup>46</sup>

*I am writing to express my strong support for the continuation of the Land Preservation Tax Credit as the most effective and efficient method that Virginia currently has for protecting important lands throughout the Commonwealth.*

*Since 2000, the tax credit has been instrumental in protecting land across Virginia. More than 700,000 acres of productive farmland, working forests, scenic vistas, public parks and historic battlefields have been protected. These lands are critical to protecting the economy of Virginia, by providing the basis for many of our most important industries, including agriculture, forestry, and tourism.*

*The General Assembly has twice evaluated the Land Preservation Tax Credit in the past several years, and both times found that it is achieving its purpose in a cost-effective manner. I ask that you recommend that the LPTC be retained in its current form.*

- Of the 71 "unique" comments received:
  - One spoke against the tax credit program. The writer mentioned the use of a conservation easement, and noted that it was related to the potential loss of a farm that had been in his family since 1774.
  - Many were from Virginia land owners, and referenced personal use of conservation easements/tax credits to help keep property in the family and to preserve the space for future generations.
  - Almost all of these comments stressed the importance of the land preservation tax credit in preserving the landscape and integrity of Virginia, the ability to escape Northern Virginia easily and enjoy nearby farms, orchards, and historic sites, and promoting the environment in Virginia particularly with regard to water quality.
  - Some spoke to the role of preserving farm land in supporting agricultural jobs.
  - A few of the comments mentioned suggestions for improving the program, such as making the pre-approval process more transparent or allowing mineral mining as a "highest and best use" of property in the valuation process.
  - Seventeen were written on behalf of organizations interested in land preservation: Rockingham County Alliance for Preservation, Southern Environmental Law Center, Virginia Forever, Preservation Virginia, Virginia Agribusiness Council, Macaulay & Burtch, Webberpack Animal Adoption and Getaway, Mosby Heritage Area Association, Knipland, LLC, Shenandoah Forum, Piedmont Environmental Council, Shenandoah Valley Network, Augusta County Alliance, Fauquier County Agricultural Development Department, Blue Ridge Foothills Conservancy, Inc., Virginia Farm Bureau, and The Nature Conservancy

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<sup>46</sup> Some of the coordinated emails made small changes to the text, but the message was substantially the same in each.