
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE PROCEDURE #08-1

SUBJECT: Transfer, Devise, or Distribution of a Conservation Credit Under Code Section 12-6-3515 (Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedural Bulletin #01-11 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-6-3515 (Supp. 2007)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2007)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Introduction:

This revenue procedure provides a method for a taxpayer to request from the Department approval of the transfer, devise, or distribution of the conservation tax credit allowed under Code Section 12-6-3515.

Law and Discussion:

Code Section 12-6-3515 provides an income tax credit for taxpayers who voluntarily convey land or certain interests in land to a qualified conservation organization. Code Section 12-6-3515(A) provides, in relevant part:

A taxpayer who has qualified for and claimed on the taxpayer's federal income tax return a charitable deduction for a gift of land for conservation or for a qualified conservation contribution donated after May 31, 2001, on a qualified real property interest located in this State may elect to claim a credit against a tax imposed by this

chapter for the applicable tax year in an amount equal to twenty-five percent of the total amount of the deduction attributable to the gift of land for conservation or to the qualified real property interest located in this State; provided, however, that the credit is subject to the caps provided in subsection (C). ...

The credit is equal to 25% of the value of the “gift of land for conservation” or the “qualified real property interest” associated with the qualified conservation contribution.

For purposes of this credit, the term “qualified conservation contribution” and “qualified real property interest” have the same meaning as defined in Internal Revenue Code Section 170(h). The term “gift of land for conservation” is defined as “a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code Section 170(h)(4)(A) to a qualified conservation organization as defined in Internal Revenue Code Section 170(h)(3).” Certain rules also exist for land that would otherwise be disqualified because of silvacultural and forestry practices. The fair market value of all qualified donations must be substantiated by a “qualified appraisal” prepared by a “qualified appraiser” as defined under applicable federal law and regulations relating to charitable contributions.

The credit cannot exceed \$250 per acre of property to which the “qualified conservation contribution” or “gift of land for conservation” applies. Additionally, the total credit claimed by a single taxpayer may not exceed \$52,500 per year. For purposes of applying the per acre and per taxpayer limitations, the attribution rules of Internal Revenue Code Section 267 apply.

Any unused credit may be carried forward until used. The unused credit may be transferred, devised, or distributed with or without consideration, to another taxpayer upon written notification to, and approval of, the transfer by the Department. A taxpayer may transfer the unused credits to one or more taxpayers (transferees) for any tax year and each of these transferees will be eligible to claim up to \$52,500 in total conservation credits for the current tax year and any subsequent tax years. The total conservation credits include any credits for the current year, whether transferred to a taxpayer or earned or retained by a taxpayer, and any carryover over of previous year’s credits transferred to a taxpayer or earned or retained by a taxpayer. If a taxpayer transfers the credit, the unused credit retains all its original attributes in the hands of the transferee. If there is a sale, exchange, or transfer of the credit, general income tax principles apply for purposes of the state income tax credit.

Procedure for Approval of Transfer:

To obtain the approval of the Department for the transfer, devise, or distribution (“transfer”) of the conservation credit for a tax year, the taxpayer must submit a written request to the following address:

Conservation Credit Transfer Requests
Research and Review Section - TRS
Department of Revenue
PO Box 125
Columbia, SC 29214 - 0019

The request must contain the following information:

1. The complete name(s), address(es), telephone number(s) and the taxpayer identification number(s) of the transferor(s) of the credit;
2. The complete name(s), address(es), telephone number(s) and taxpayer identification number(s) of the transferee(s) of the credit;
3. The date each transfer, devise, or distribution of the credit will be made;
4. The value and date of the “gift of land for conservation” or “qualified real property interest;”
5. The total amount of South Carolina conservation credit available to the transferor based on the value of the “gift of land for conservation” or “qualified real property interest;”
6. The amount of credit currently available to be transferred by the transferor(s) (this is the total amount of credit attributable to the “gift of land for conservation” or the “qualified real property interest” less any previous amounts of credit transferred to transferees in prior tax years or credits to be used or used by the transferor in the current or prior tax years for the “gift of land for conservation” or “qualified real property interest”);
7. The amount of the credit to be transferred to each transferee as well as the amount of credit, if any, to be used by the transferor in the current tax year, or retained by the transferor which could be used or transferred in future years;
8. A complete description of the consideration that was, or will be, paid for each transfer, devise or distribution of the credit, and if the consideration is not in cash, check, or money order, the fair market value of the consideration;
9. The transferor must also provide a waiver of the right to claim that portion of the credit being transferred to each transferee. If the transferor is an S corporation, a partnership, or an LLC taxed as a partnership or an S corporation, the waiver must be executed by all shareholders, partners, or members, respectively, that would otherwise be eligible to claim the credit. Any waiver must also include each shareholder’s, partner’s, or member’s name, address, telephone number and taxpayer identification number.

The department must approve a request for transfer of the credit before the credit is actually transferred. The approval is valid only if the transfer is completed consistently with the information contained in the request for transfer. If the Department has not approved the transfer within two weeks of submission of the request, the request will be deemed approved two weeks after the transferor has submitted all information requested above in complete form and the transfer is carried out consistently with the information submitted in the request.

Example:

In April 2007, Taxpayer A donates a qualified real property interest valued at \$1,000,000 that qualifies as a qualified conservation contribution. The contribution does not exceed the \$250 per acre contribution limit. Taxpayer A earns a \$250,000 South Carolina income tax credit as a result of the contribution ($\$1,000,000 \times .25 = \$250,000$). Taxpayer A anticipates that he will have no South Carolina income tax liability for the tax year, so Taxpayer A intends to sell \$100,000 of the credit to Taxpayer B for \$80,000 and \$150,000 of the credit to Taxpayer C for \$110,000 to be used against their South Carolina income tax liability.

Taxpayer A must submit a request for approval of the transfer of the credit to the department listing the information requested above concerning Taxpayer A as well as the information requested above concerning Taxpayers B and C. Taxpayer A must also state that he will receive \$190,000 in consideration for the transfer of the credit and that he will transfer, \$100,000 of the credit to Taxpayer B and \$150,000 of the credit to Taxpayer C. Taxpayer A must also include a waiver of the right to claim the credit that is being transferred to Taxpayers B and C.

Provided that the request for transfer is approved, or deemed approved, before the end of each transferee's tax year for which they intend to use the credit, and provided that neither Taxpayer B nor C have any other conservation credits, Taxpayer B may use up to \$52,500 of his \$100,000 transferred credit to offset his tax liability for that tax year and Taxpayer C may use up to \$52,500 of his \$150,000 transferred credit to offset his tax liability for that tax year. Both Taxpayer B and Taxpayer C may carry forward any unused credit until fully used.

For questions concerning this revenue procedure, please contact the Office Operations Division, Research and Review Section of the Department at (803) 898-5786.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

April 15, 2008
Columbia, South Carolina